GENERAL COMPLIANCE

1. All projects must comply with the applicable Federal statutes, regulatory requirements and policies including but not limited to:

   A. The National Environmental Policy Act of 1969, as amended (P.L. 91-190, 42 U.S.C. 4321 et. seq.) (see Chapter 650.2).

   B. The Clean Air Act, as amended (42 U.S.C. 7609).

   C. The Clean Water Act (33 U.S.C. Secs. 1288, 1314, 1341, 1342, 1344).

   D. Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

   E. Executive Order 11288, concerning prevention, control and abatement of water pollution (see Chapter 660.5).

   F. The Flood Disaster Protection Act of 1973 (12 U.S.C. Sec. 24, 1701-1 Supp.) (42 U.S.C. Sec. 4001 et. seq.) (see Chapter 650.6).

   G. Executive Order 11988, Floodplain Management (see Chapter 650.7).

   H. Executive Order 11296, Evaluation of Flood Hazard in Locating Federally Owned or Financed Buildings, Roads, and other Facilities and in Disposing of Federal Lands and Properties.

   I. Federal Act for Protection and Restoration of Estuarine Areas (P.L. 90-454).

   J. Wild and Scenic Rivers Act of 1968 (P.L. 90-542) (16.U.S.C.1274 et. seq.).

   K. Coastal Zone Management Act of 1972 (P.L. 92-583) (16 U.S.C. Sec. 1451, 1456) (see Chapter 660.5).

   L. The Rivers and Harbor Act of 1899 (33 U.S.C. Sec. 401 et. seq.).

   M. Executive Order 11990, Protection of Wetlands (see Chapter 650.7).

   N. The Fish and Wildlife Coordination Act (16 U.S.C. Sec. 661, 662).

   O. The Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et. seq.) (see Chapter 660.5).

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P. The Antiquities Act of 1906 (16 U.S.C. Sec. 431); (see Chapter 650.4).

Q. The Archeological and Historic Preservation Act of 1974, as amended (P.L. 93-291, 16 U.S.C. Sec. 469 a-1)(see Chapter 650.4).

R. The National Historic Preservation Act of 1966, as amended (P.L. 88-655, 16 U.S.C. Sec. 470 et. seq.) (see Chapter 650.4).

S. Executive Order 11593, Protection and Enhancement of the Cultural Environment (see Chapter 650.4).

T. Federal-Aid Highway Act of 1973 (P.L. 93-87).

U. Architectural Barriers Act of 1968 (P.L. 90-480) (see Chapter 660.5).

V. Section 504, The Rehabilitation Act of 1973, as amended, (P.L. 93-112).

W. Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970 (P.L. 94-646) (see Chapter 650.3).

X. Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 42 U.S.C. Secs. 2000d to 2000d-4) (see Chapter 650.9).

Y. Executive Order 11246, Equal Employment Opportunity (see Chapter 650.5).

Z. Office of Management and Budget Circular A-102. Provides uniform administrative requirements for grants-in-aid to State and local governments (see Chapter 675.3, Attachment A).

AA. Office of Management and Budget Circular A-87. Identifies cost principles applicable to grants and contracts with State and local governments as they relate to the application, acceptance and use of Federal funds (see Chapter 670.3).

AB. Power Plant and Industrial Fuel Use Act of 1978 (P.L. 95-620) (see 640.3.7J and 660.5.3V).

AC. Executive Order 12185, Conservation of Petroleum and Natural Gas (see 640.3.7J and 660.5.3V).

AD. Executive Order 12372, Intergovernmental Review of Federal Programs (see Chapter 650.8).

AE. Office of Management and Budget Circular A-128. Implements the Single Audit Act of 1984 (P.L. 98-502). This circular supersedes

Attachment P of OMB Circular A-102, effective July 18, 1985. (see Chapter 675.7)

AF. Executive Order 12432, Minority Business Enterprise Development. (see Chapter 650.10)

AG. Emergency Wetlands Resources Act of 1986 (P.L. 99-645).

AH. Land and Water Conservation Fund Program of Assistance to States; Post-Completion Compliance Responsibilities (36 CFR Part 59).

AI. Nonprocurement Debarment and Suspension (43 CFR 12.100-.510)

AJ. Contract Work Hours and Safety Standards Act (40 U.S.C 327-330) and implementing regulations (29 CFR 5).

AK. Restrictions on Lobbying With Appropriated Funds (P.L. 101-121 Sec. 319) (31 U.S.C. Sec. 1352).

AL. The Drug-Free Workplace Act of 1988 (P.L. 100-690) (41 U.S.C. 701 et. seq.).

AM. Other applicable statutes, executive orders and regulations as may be promulgated from time to time.

ENVIRONMENTAL COMPLIANCE (NEPA)
GENERAL COMPLIANCE

1. **Environmental Compliance.** The national policy concerning the assessment of the environmental impact of Federal and federally funded actions is contained in the National Environmental Policy Act of 1969 (NEPA) (Public Law 91-190, as amended; 82 Stat. 852, as amended; 42 U.S.C. 4321-4347). (Attachment 650.2D).

   All NPS L&WCF Grant actions are subject to the provisions of NEPA and the Council on Environmental Quality Regulations For Implementing the Procedural Provisions of NEPA (CEQ Regulations 40 CFR 1500-1508). (Attachment 650.2C). Department of the Interior (DOI) policy and procedures for implementing NEPA and the CEQ Regulations appear in the Departmental Manual (516 DM 1-6, and 148 DM 6.1D).

   The CEQ Regulations (40 CFR 1500.4(p)) provide that certain categories of proposed actions may be excluded from the NEPA process. Categorical exclusions approved for NPS appear in 516 DM 6, Appendix 7, and 516 DM 2, Appendix 1. (see Attachment 650.2G). All other actions require the preparation of either an environmental assessment (EA) or an environmental impact statement (EIS).

2. **NPS Responsibility.** NPS is responsible for determining and advising the State whether a proposed grant action is either categorically excluded or requires an EA or EIS. NPS also is responsible for ensuring the adequacy of any required EA or EIS.

   Projects involving floodplains and wetlands must comply with 44 CFR 3642; Executive Order 11988, Floodplain Management; and Executive Order 11990, Protection of Wetlands. This compliance requires environmental information in addition to that required in this Chapter. (see Chapter 650.7).

3. **State Responsibility.** As part of a grant application package, the State must submit to NPS appropriate environmental documentation. If appropriate, agencies with Statewide jurisdiction that qualify under NEPA Section 102(2)(d) may be required to submit an EIS. (Attachment 650.2D). The scope, content and objectivity of the document shall comply with NEPA, CEQ Regulations, and Departmental Manual.

   A State that has environmental laws equivalent to or more stringent than NEPA may submit environmental documentation meeting both State and Federal requirements.

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4. Categorical Exclusions. Authorized categorical exclusions are those referred to in 516 DM 6, Appendix 7 and 516 DM 2, Appendix 1. The actions shown qualify for categorical exclusion unless NPS determines that there is cause for exception under 516 DM 2.3A(3). (Attachment 650.2G).

5. Certification. When a proposed project appears to qualify as one of the categorical exclusions referred to paragraph 4 above, and does not involve one or more of the exceptions in 516 DM 2.3(3), the State shall indicate on the Environmental Certification Form (Attachment 650.2A) the categorical exclusion into which the project falls. If NPS concurs, the certificate will be signed and maintained as part of the project documentation. NPS may also unilaterally determine that a proposed grant action qualifies as a categorical exclusion after reviewing the environmental assessment submitted by the State.

6. Special Cases. NPS may find that some actions which normally qualify for categorical exclusion merit special consideration. In such cases NPS will require submission of an EA, or if the grant qualifies under NEPA Section 102(2)(d), an EIS.

7. Environmental Assessments.

   A. An EA should cover the points listed in 650.2.7B below in sufficient detail to resolve the test of "major and significant" (see CEQ Regulations, Section 1508.18 and 1508.27) (Attachment 650.2C) and provide a basis for deciding whether to prepare an EIS on the project. Such assessments generally need be no more than two or three pages in length, except when complex projects are involved.

      If NPS decides that no EIS is required, the EA supporting that decision and a Finding of No Significant Impact (FONSI) (Attachment 650.2B) will be made part of the record.

      An EA should not be prepared if the need for an EIS is self-evident.

   B. Format and Content. Pertinent information of sufficient scope and depth must be provided in an EA to allow NPS to accurately ascertain the impact of the project and to determine whether an EIS is needed. Whenever possible, an environmental impact should be quantified. In all cases the level of activities involved should be given--number of trees to be removed, cubic yards of debris to be removed, cubic yards of fill to be required, etc. For projects with property rights outstanding, the environmental information must also explain how the State plans to assure that the environment will not be affected significantly. An EA will cover the following four points at a minimum:

(1) The Proposed Action. Include a description of the proposed action, a statement regarding the need for it, a description of what the action is designed to accomplish, location of the project, its scope, the level of impact-causing activities associated with the project, when the action is to take place, and, if applicable, its relation to other Federal, State, or local projects and proposals. Cite other Federal actions (i.e., 404 permit, etc.). Include a map.

(2) Alternatives to the proposed action. This section will include a brief description of alternatives as required by NEPA Section 102(2)(E), which states:

> Study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

The environmental impacts of the proposal and the alternatives should be presented in comparative form and should define the issues, pros and cons of a reasonable range of alternatives, and provide a clear basis for choice between them by NPS and the public.

(3) Environmental impacts of proposed action. Succinctly describe those environmental elements which would be affected. Discuss anticipated impacts on the following elements and any means to mitigate adverse environmental impacts:

- land use (project site and surrounding area)
- fish and wildlife
- vegetation
- geology and soils
- mineral resources
- air and water quality
- water resources/hydrology
- historic/archeological resources
- transportation/access

- consumption of energy resources

- socio-economic effects

"Impacts" are defined as causing direct or indirect changes in the existing environment, whether beneficial or adverse, which are anticipated as a result of the proposed action or related future actions. To the extent appropriate, the document will discuss impacts of the action, including environmental damage which could be caused by users, upon the physical and biological environment as well as upon cultural, aesthetic, and socio-economic conditions. Elements of impacts which are unknown or only partially understood should be indicated. Any off-site impacts, such as increased traffic on neighborhood roads or increased noise levels in surrounding areas, should be described.

(4) A listing of agencies and persons consulted.

C. Public Notice. Public notice should be provided in accordance with 40 CFR 1506.6 (Attachment 650.2C) and, where appropriate, the public should be involved in the environmental assessment process. In many instances, the State's Intergovernmental Review System established under E.O. 12372 may be one acceptable method for meeting this requirement (see Chapter 650.8).

D. Adoption. In accordance with 40 CFR 1506.3 (Attachment 650.2C), an EA prepared for a Federal grant program not administered by NPS may be submitted if adequate to meet environmental documentation requirements of proposed L&WCF actions.

E. Points to Keep in Mind:

(1) Environmental documentation should be free of project justification and personal bias. The project should be justified elsewhere in the grant application.

(2) Do not rely on generalities. Specific facts are essential. All statements and conclusions should be supported, and quantified where possible.

(3) Use graphics to help explain the project.

(4) Be concise, clear and to the point.

(5) Adverse impacts should be addressed as fairly as beneficial impacts.

8. **Finding of No Significant Impact (FONSI).** If NPS, after reviewing the environmental assessment, determines that the proposed project will not have a significant effect on the quality of the human environment and that an EIS is therefore unnecessary, a Finding of No Significant Impact (FONSI) (Attachment 650.2B) will be signed and included in the project file.

9. **Guidelines to Determine When an Environmental Impact Statement Should Be Prepared.** NPS will require sufficient environmental data from the grantee to prepare an EIS on a proposed L&WCF project deemed to be a major Federal action having a significant impact on the physical, biological, and/or socio-economic environment of the project site and/or surrounding area. Cumulative impacts and/or subsequent actions must be considered in environmental data submitted.

   A. Factors to Consider. The occurrence of one or more of the following factors indicates that an EIS may be needed:

      (1) Marshes, or wetlands, unique animal or plant ecosystems, lakes, streams, or marine areas are affected significantly.

      (2) The proposed L&WCF project would or might result in major natural or physical changes, including interrelated social and economic changes and residential and land use changes, within the project area or its immediate environs.

      (3) An archeological or historical site on, or eligible for nomination to the National Register of Historical Places would be subjected to significant adverse affects by the proposed project. The procedures to follow for such a site are covered in Chapter 650.4.

      (4) Highly controversial issues involving the environmental effects of the project exist or are expected.

      (5) The project site contains threatened or endangered species of flora or fauna, significant mineral values, or a unique geologic formation.

      (6) Actions which foreclose other beneficial uses of mineral, agricultural, timber, water, energy, or transportation resources critical to the Nation's or a State's welfare.

   NPS may determine that a proposed project, even though not involving any of the above factors, requires preparation of an EIS.

10. Adoption of Previous Statement:

A. Other agency's final EIS. In accordance with 40 CFR 1506.3 (Attachment 650.2C), an EIS prepared for a Federal grant program not administered by NPS may be adopted by NPS if adequate to meet the requirements of a proposed L&WCF action.

When another agency's statement is adopted, only the final statement must be circulated.

B. Previous NPS final EIS. An EIS prepared for the acquisition of lands under a L&WCF grant, or other Federal actions, will satisfy NEPA Section 102(2)(C) for a L&WCF development project provided that:

(a) the development is in accord with the plans submitted with the acquisition project; and

(b) the EIS for the acquisition project adequately describes the environmental impacts of the facility to be developed and public use of the area.

11. Preparing and Processing an Environmental Impact Statement (EIS)

A. Policy. Each EIS should be prepared in accordance with:

(1) CEQ Regulations for Implementing NEPA: 40 CFR 1500-1508 (Attachment 650.2C)

(2) DOI Manual: 516 DM 4 (Attachment 650.2E)

(3) NPS 12 -- NEPA Handbook

For any EIS prepared by a State agency with statewide jurisdiction under NEPA Section 102(2)(d), the responsible NPS official shall actively furnish guidance and participate in the preparation of the EIS and shall independently evaluate the EIS prior to its approval and adoption.

B. Notice of Intent (NOI). (40 CFR 1501.7 and 1508.22; 516 DM 2.3D) (Attachments 650.2C and 650.2F)

After a decision is made to prepare an EIS, an NOI will be published by NPS in the Federal Register and made available to the affected public (see 40 CFR 1506.6.) (Attachment 650.2C).

C. Scoping Process. [40 CFR 1501.7, 516 DM 2.6] (Attachment 650.2C and 650.2F)

Scoping is an early and open process to determine the scope of significant issues to be addressed in an EIS. An invitation to affected Federal, State and local agencies and interested persons to participate in the scoping process may be included in the NOI.

D. Format and Content of EIS. The necessary in-depth environmental information and analysis should be prepared in the following format:

(1) Cover Sheet.

(2) Summary.

(3) Table of Contents.

(4) Purpose of and need for the Action.

(5) Alternatives including the Proposed Action.

(6) Affected Environment.

(7) Environmental Consequences.

(8) Consultation and Coordination in Developing the Proposal andPreparation and Review of the EIS. This section will contain the list of Agencies, Organizations and persons to whom copies of the statement are sent.

(9) Index.

(10) Appendices (if any).

Each element of the format should contain the information called for in 40 CFR 1502.11 through 1502.18 (Attachment 650.2C), and NPS 12, NEPA Handbook, plus appropriate maps/graphics of the area affected by the proposed action.

E. Processing of Draft EIS. If an EIS requires a Secretarial decision or concurrence, the proposed draft EIS shall be processed through the Department's Office of Environmental Project Review (OEPR) for clearance to print and distribute. Printing clearance for other EISs is obtained from the Chief, NPS Office of Park Planning and Environmental Quality.

F. Final EIS

(1) The final EIS shall include a "Public and Other Agency Comment and Response Section." This section is an expansion of the Consultation/Coordination Chapter described in item 650.2.11D(8). All letters from Federal and state agencies will be printed in full. A response will be made to all substantive comments and/ or the draft document revised as required.

(2) Distribution of Final EIS. At a minimum, a copy of the final EIS will be sent to each commentor and all Federal agencies that were sent the draft EIS.

(3) Comments on Final EIS. Comments are not solicited on a final EIS. However, any comments received within 30 days of distributing a Final EIS will be considered in deciding whether to approve a L&WCF grant.

G. Record of Decision No decision on the proposed action may be made until 30 days after notice of the filing of the EIS is published by the Environmental Protection Agency in the Federal Register. The record of decision shall be in accord with 40 CFR 1505.2. (Attachment 650.2C)

ENVIRONMENTAL CERTIFICATION

Based upon a review of the application, proposal narrative, and the supporting documentation contained in the application, it has been determined that the proposed action, proposed L&WCF Project_____, meets the criteria for categorical exclusion under 516 DM 6, Appendix 7, Item* .

_____ _____
Regional Director, Region Date
National Park Service

* (indicate appropriate categorical exclusion)

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NATIONAL PARK SERVICE

FINDING OF NO SIGNIFICANT IMPACT

Project Number and Name

City, County, State

Proposed Federal Action:

Approval of L&WCF Grant for _____

Federal Environmental Finding

After careful and thorough review and consideration of the facts contained in the attached Environmental Assessment for the proposed project, I find that the proposed Federal action will not significantly affect the quality of the human environment under National Environmental Policy Act, Section 102(2)(C) and, therefore, an EIS is not required.

Name
Title

Date

40 CFR PARTS 1500 - 1508 COUNCIL ON ENVIRONMENTAL QUALITY REGULATIONS FOR IMPLEMENTING THE PROCEDURAL PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

PART 1500 - PURPOSE, POLICY, AND MANDATE

Sec.
1500.1 Purpose.
1500.2 Policy.
1500.3 Mandate.
1500.4 Reducing paperwork.
1500.5 Reducing delay.
1500.6 Agency authority.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork - even excellent paperwork - but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

§ 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or

minimize any possible adverse effects of their actions upon the quality of the human environment.

§ 1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 *et seq.*) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

§ 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§§ 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(d) Writing environmental impact statements in plain language (§ 1502.8).

(e) Following a clear format for environmental impact statements (§ 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(h) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20).

(j) Incorporating by reference (§ 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(l) Requiring comments to be as specific as possible (§ 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (§ 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(o) Combining environmental documents with other documents (§ 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment

and which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (§ 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§ 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (§ 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (§ 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (§§ 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (§ 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (§ 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(i) Combining environmental documents with other documents (§ 1506.4).

(j) Using accelerated procedures for proposals for legislation (§ 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (§ 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

§ 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase ``to the fullest extent possible'' in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

PART 1501 - NEPA AND AGENCY PLANNING

Sec.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate con-

sideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

§ 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by § 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

§ 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (§ 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in § 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

§ 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in §1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(ii) The nature of the proposed action is one without precedent.

§ 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

§ 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special exper-

tise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in § 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

§ 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§ 1508.22) in the Federal Register except as provided in § 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(c). An agency may give notice in accordance with § 1506.6.

(2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in § 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tenta-

tive planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§ 1502.7).

(2) Set time limits (§ 1501.8).

(3) Adopt procedures under § 1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

§ 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by § 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: Provided, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

PART 1502-ENVIRONMENTAL IMPACT STATEMENT

Sec.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

§ 1502.2 Implementation.

To achieve the purposes set forth in § 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§ 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

§ 1502.3 Statutory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (§ 1508.11) are to be included in every recommendation or report.

On proposals (§ 1508.23).

For legislation and (§ 1508.17).

Other major Federal actions (§ 1508.18).

Significantly (§ 1508.27).
Affecting (§§ 1508.3, 1508.8).
The quality of the human environment (§ 1508.14).

§ 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§ 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water,region, or metropolitan area.

(2).Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§ 1501.7), tiering (§ 1502.20), and other methods listed in §§ 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

§ 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (§ 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (§§ 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

§ 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter-disciplinary

approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.7).

§ 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of § 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

§ 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them.Agencies should employ writers of clear prose or editors to write, review,or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

§ 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in § 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

§ 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).

(h) List of preparers.
(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.
(j) Index.
(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in § 1502.11 through § 1502.18, in any appropriate format.

§ 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:
(a) A list of the responsible agencies including the lead agency and any cooperating agencies.
(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.
(c) The name, address, and telephone number of the person at the agency who can supply further information.
(d) A designation of the statement as a draft, final, or draft or final supplement.
(e) A one paragraph abstract of the statement.
(f) The date by which comments must be received (computed in cooperation with EPA under § 1506.10).
The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

§ 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

§ 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

§ 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:
(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
(c) Include reasonable alternatives not within the jurisdiction of the lead agency.
(d) Include the alternative of no action.
(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

§ 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The

descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.8).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including there use and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(f)).

§ 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§ 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

§ 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§ 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

§ 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in § 1502.18(d) and unchanged

statements as provided in § 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft. If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

§ 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

§ 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

§ 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research

methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the **Federal Register** on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

§ 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

§ 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

§ 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503 - COMMENTING

Sec.
1503.1 Inviting comments.
1503.2 Duty to comment.
1503.3 Specificity of comments.
1503.4 Response to comments.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act,as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or

special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed. Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under § 1506.10.

§ 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in § 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

§ 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

§ 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§ 1502.19). The entire document with a new cover sheet shall be filed as the final statement (§ 1506.9).

PART 1504 - PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.
1504.1 Purpose.
1504.2 Criteria for referral.
1504.3 Procedure for referrals and response.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

§ 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.
(b) Severity.
(c) Geographical scope.
(d) Duration.
(e) Importance as precedents.
(f) Availability of environmentally preferable alternatives.

§ 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a

matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council

that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

PART 1505 - NEPA AND AGENCY DECISIONMAKING

Sec.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (§ 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

§ 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6(c) and (d), and Part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

§ 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506 - OTHER REQUIREMENTS OF NEPA

Sec.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec.309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the

environment (e.g. long lead time equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

§ 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

§ 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

§ 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

§ 1506.5 Agency responsibility.

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information

submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (§ 1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) Environmental impact statements. Except as provided in §§ 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under § 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

§ 1506.6 Public involvement.

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the **Federal Register** and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the *102 Monitor*. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

§ 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

§ 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (§ 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; *Provided,* That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by §§ 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*) and the Wilderness Act (16 U.S.C. 1131 *et seq.*)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency rec-

ommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

§ 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and § 1506.10.

§ 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the **Federal Register** each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under § 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph(a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consulta-

tion with the lead agency. (Also see § 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

§ 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

§ 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Actor under section 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the **Federal Register** of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507 - AGENCY COMPLIANCE

Sec.
1507.1 Compliance.
1507.2 Agency capability to comply.
1507.3 Agency procedures.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by § 1507.3 to the requirements of other applicable laws.

§ 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

§ 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the **Federal Register**, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the **Federal Register** for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§ 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§ 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those pre-

sented in § 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by § 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508-TERMINOLOGY AND INDEX

Sec.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

§ 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*) which is also referred to as "NEPA."

§ 1508.3 Affecting.

"Affecting" means will or may have an effect on.

§ 1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 eventhough it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§ 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in § 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

§ 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

§ 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

§ 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§ 1508.9 Environmental assessment.

"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

§ 1508.10 Environmental document.

"Environmental document" includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

§ 1508.11 Environmental impact statement.

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

§ 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

§ 1508.13 Finding of no significant impact.

"Finding of no significant impact" means a document by a Federal agency

briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

§ 1508.14 Human environment.

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (§ 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§ 1508.15 Jurisdiction by law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

§ 1508.16 Lead agency.

"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

§ 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

§ 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 *et seq.*, with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

§ 1508.19 Matter.

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

§ 1508.20 Mitigation.

"Mitigation"includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

§ 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

§ 1508.22 Notice of intent.

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

§ 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

§ 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

§ 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§ 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include: (1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

§ 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

§ 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity.* This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or de-

struction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

§ 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED*

An Act to establish national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

PURPOSE

Sec. 2. The Purposes of this Act are: To declare a national policy which will encourage harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing pokicy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other exxential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation May --

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health of safety, or other undesirable and unintended consequences;

(4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewabel resources and approach the maximum attainable recycling of depletable resources.

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* Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub.L. 94-52,July 3, 1975 and Pub. L. 94-83, August 9, 1975.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies seet forth in this Act, and (2) all agencies of the Federal Government shall--

(A) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) Identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given apropriate consideration in decisionmaking along with economic and technical considerations;

(C) Include in every reco9mmendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the huyman environment, a detailed statement by the responsible official on--

(i) The environmental impact of the proposed action,
(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,
(iii) Alternatives to the proposed action,
(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and th the public as provided by Section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(d) Any detailed statement required under subparagraph (c) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency of official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,
(ii) the responsible Federal official furnishes guidance and participates in such preparation,
(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or afected Federal land management entity and, if there is any disagreement on such impacts, prepares a written

assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(f) Recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(g) Make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(h) Initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(i) Assist the Council on Environmental Quality established by title II of this Act.

Sec. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104. Nothing in section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105. The Policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major naural, manmadem or altered environmental classes of the Nation, including but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and forseeable trends in the quality in the quality, management and utilization of such environments and the dffects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a revies of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

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Sec. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the Senate. The President shall designate one of the members of the Council to serve as Chairman, Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

Sec. 204. It shall be the duty and function of the Council--

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 of this title;

(2) to gather timely and authoritative invormation concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservatgion, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each tear to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205. In exercising its powers, functions, and duties under this Act, the Council shall--

(1) Consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) Utilize to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organization, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensted at the rate provided for Level II of the Executive Schedule Pay Rates (5

U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

Sec. 208. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209. There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

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CHAPTER 4 Environmental Impact Statements

4.1 **Purpose.** This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to environmental impact statements (EIS).

4.2 **Statutory Requirements** [1502.3]. NEPA requires that an EIS be prepared by the responsible Federal official. This official is normally the lowest-level official who has overall responsibility for formulating, reviewing, or proposing an action or, alternatively, has been delegated the authority or responsibility to develop, approve, or adopt a proposal or action. Preparation at this level will insure that the NEPA process will be incorporated into the planning process and that the EIS will accompany the proposal through existing review processes.

4.3 **Timing** [1502.5].

A. The feasibility analysis (go/no-go) stage, at which time an EIS is to be completed, is to be interpreted as the stage prior to the first point of major commitment to the proposal. For example, this would normally be at the authorization stage for proposals requiring Congressional authorization, the location or corridor stage for transportation, transmission, and communication projects, and the leasing stage for mineral resources proposals.

B. An EIS need not be commenced until an application is essentially complete; e.g., any required environmental information is submitted, any consultation required with other agencies has been conducted, and any required advance funding is paid by the applicant.

4.4 **Page Limits** [1502.7]. Where the text of an EIS for a complex proposal or group of proposals appears to require more than the normally prescribed limit of 300 pages, bureaus will insure that the length of such statements is no greater than necessary to comply with NEPA, the CEQ regulations, and this Chapter.

4.5 **Supplemental Statements** [1502.9].

A. Supplements are only required if such changes in the proposed action or alternatives, new circumstances, or resultant significant effects are not adequately analyzed in the previously prepared EIS.

B. A bureau and/or the appropriate program Assistant Secretary will consult with the Office of Environmental Project Review and the Office of the Solicitor prior to proposing to CEQ to prepare a final supplement without preparing an intervening draft.

C. If, after a decision has been made based on a final EIS, a described proposal is further defined or modified and if its changed effects are minor or still within the scope of the earlier EIS, an EA and FONSI may be prepared for subsequent decisions rather than a supplement.

4.6 Format [1502.10].

A. Proposed departures from the standard format described in the CEQ regulations and this Chapter must be approved by the Office of Environmental Project Review.

B. The section listing the preparers of the EIS will also include other sources of information, including a bibliography or list of cited references, when appropriate.

C. The section listing the distribution of the EIS will also briefly describe the consultation and public involvement processes utilized in planning the proposal and in preparing the EIS, if this information is not discussed elsewhere in the document.

D. If CEQ's standard format is not used or if the EIS is combined with another planning or decisionmaking document the section which analyzes the environmental consequences of the proposal and its alternatives will be clearly and separately identified and not interwoven into other portions of or spread throughout the document.

4.7 Cover Sheet [1502.11]. The cover sheet will also indicate whether the EIS is intended to serve any other environmental review or consultation requirements pursuant to Section 1502.25.

4.8 Summary [1502.12]. The emphasis in the summary should be on those considerations, controversies, and issues which significantly affect the quality of the human environment.

4.9 Purpose and Need [1502.13]. This section may introduce a number of factors, including economic and technical considerations and Departmental or bureau statutory missions, which may be beyond the scope of the EIS. Care should be taken to insure an objective presentation and not a justification.

4.10 Alternatives Including the Proposed Action [1502.14].

A. As a general rule, the following guidance will apply:

(1) For internally initiated proposals; i.e., for those cases where the Department conducts or controls the planning process, both the draft and final EIS shall identify the bureau's proposed action.

(2) For externally initiated proposals; i.e., for those cases where the Department is reacting to an application or similar request, the draft and final EIS shall identify the applicant's proposed action and the bureau's preferred alternative unless another law prohibits such an expression.

(3) Proposed departures from this guidance must be approved by the Office of Environmental Project Review and the Office of the Solicitor.

B. Mitigation measures are not necessarily independent of the proposed action and its alternatives and should be incorporated into and analyzed as a part of the proposal and appropriate alternatives. Where appropriate, major mitigation measures may be identified and analyzed as separate alternatives in and of themselves where the environmental consequences are distinct and significant enough to warrant separate evaluation.

4.11 Appendix [1502.18]. If an EIS is intended to serve other environmental review or consultation requirements pursuant to Section 1502.25, any more detailed information needed to comply with these requirements may be included as an appendix.

4.12 Incorporation by Reference [1502.21]. Citations of specific topics will include the pertinent page numbers. All literature references will be listed in the bibliography.

4.13 Incomplete or Unavailable Information [1502.22]. The references to overall costs in this section are not limited to market costs, but include other costs to society such as social costs due to delay.

4.14 Methodology and Scientific Accuracy [1502.24]. Conclusions about environmental effects will be preceded by an analysis that supports that conclusion unless explicit reference by footnote is made to other supporting documentation that is readily available to the public.

4.15 Environmental Review and Consultation Requirements [1502.25].

A. A list of related environmental review and consultation requirements is attached as Appendix 1 to this Chapter.

B. If the EIS is intended to serve as the vehicle to fully or partially comply with any of these requirements, the associated analyses, studies, or surveys will be identified as such and discussed in the text of the EIS and the cover sheet will so indicate. Any supporting analyses or reports will be referenced or included as an appendix and shall be sent to reviewing agencies as appropriate in accordance with applicable regulations or procedures.

4.16 Inviting Comments [1503.1].

A. Comments from State agencies will be requested through the State Clearinghouse established by the Governor pursuant to OMB Circular A-95, unless the Governor has designated an alternative review process, and may be requested from local agencies through Areawide Clearinghouses to the extent that they include the affected local jurisdiction.

B. When the proposed action may affect the environment of an Indian reservation, comments will be requested from the Indian tribe through the tribal governing body, unless the tribal governing body has designated an alternate review process.

4.17 **Response to Comments** [1503.4].

A. Preparation of a final EIS need not be delayed in those cases where a Federal agency, from which comments are required to be obtained [1503.1(a)(1)], does not comment within the prescribed comment period. Informal attempts will be made to determine the status of any such comments and every reasonable attempt should be made to include the comments and a response in the final EIS.

B. When other commentors are late, their comments should be included in the final EIS to the extent practicable.

C. For those EIS requiring the approval of the Assistant Secretary--Policy, Budget and Administration pursuant to 516 DM 6.3, bureaus will consult with the Office of Environmental Project Review when they propose to prepare an abbreviated final EIS [1503.4(c)].

4.18 Elimination of Duplication with State and Local Procedures [1506.2]. Bureaus will incorporate in their appropriate program regulations provisions for the preparation of an EIS by a State agency to the extent authorized in Section 102(2)(D) of NEPA. Eligible programs are listed in Appendix 2 to this Chapter.

4.19 Combining Documents [1506.4]. See 516 DM 46D.

4.20 Departmental Responsibility [1506.6]. Following the responsible official's preparation or independent evaluation of and assumption of responsibility for an environmental document, an applicant may print it provided the applicant is bearing the cost of the document pursuant to other laws.

4.21 Public Involvement [1506.6]. See 516 DM 1.6 and 301 DM 2.

4.22 Further Guidance [1506.7]. The Office of Environmental Project Review may provide further guidance concerning NEPA pursuant to its organizational responsibilities (110 DM 22) and through supplemental directives (015 DM 6).

4.23 Proposals for Legislation [1506.8]. The Legislative Counsel, in consultation with the Office of Environmental Project Review, shall:

A. Identify in the annual submittal to OMB of the Department's proposed legislative program any requirements for and the status of any environmental documents.

B. When required, insure that a legislative EIS is included as a part of the formal transmittal of a legislative proposal to the Congress.

4.24 Time Periods [1506.10].

A. The minimum review period for a draft EIS will be sixty (60) days from the date of transmittal to the Environmental Protection Agency.

B. For those EIS requiring the approval of the Assistant Secretary--Policy, Budget and Administration pursuant to 516 DM 6.3, the Office of Environmental Project Review will be responsible for consulting with the Environmental Protection Agency and/or CEQ about any proposed reductions in time periods or any extensions of time periods proposed by those agencies.

LIST OF OTHER ENVIRONMENTAL REVIEW AND CONSULTATION REQUIREMENTS

1.1 Cultural Resources

Archeological Resources Protection Act of 1979
16 U.S.C. § 470aa et seq.

Archeological and Historic Preservation Act of 1974
16 U.S.C. § 469a-1

National Historic Preservation Act of 1966 (Sec. 106)
16 U.S.C. § 47Of

Antiquities Act of 1906
16 U.S.C. § 431

Executive Order 11593 (Protection and Enactment of the Cultural Environment)

American Indian Religious Freedom Act
92 Stat. 469

1.2 Water and Related Land Resources

Marine Protection, Research and Sanctuaries Act of 1972
(Sec. 102, 103, 301) 16 U.S.C. § 1431 et seq.

Safe Drinking Water Act of 1974
42 U.S.C. § 300f

Flood Disaster Protection Act of 1973
12 U.S.C. § 24, 1701-1 Supp 42 U.S.C. § 4001 et seq.

Coastal Zone Management Act of 1972
16 U.S.C. § 1451, 1456

Estuary Protection Act
16 U.S.C. § 1221

Executive Order 11988 (Floodplain Management)

Executive Order 11990 (Wetlands Protection)
Federal Water Project Recreation Act (Ss 6(a))
16 U.S.C. § 4601-17

Clean Water Act (§ 208, 303, 401, 402, 404, 405, 511)

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33 U.S.C. §§ 1288, 1314, 1341, 1342, 1344

Rivers and Harbors Act of 1899 (§§ 9 and 10)
33 U.S.C. § 401 et seq.

Wild and Scenic Rivers Act of 1968 (Sec. 7)
16 U.S.C. § 1274 et seq.

Federal Power Act
16 U.S.C. § 797

Water Resources Planning Act of 1966
42 U.S.C. § 1962 et seq.

Water Resources Council's Principles and Standards

1.3 Wildlife

Endangered Species Act (Sec. 7)
16 U.S.C. § 1531 et seq.

Fish and Wildlife Coordination Act
16 U.S.C. § 661, 662

Fish and Wildlife Conservation at Small Watershed Projects
16 U.S.C. § 1001, 1005(4), 1008

1.4 Public Lands, Open Space, Recreation

Federal Land Policy and Management Act
43 U.S.C. § 1701, 1761-1771

Mineral Leasing Act Amendments of 1973
30 U.S.C. § 185

Forest and Rangeland Renewable Resources Act
16 U.S.C. § 1601 et seq.

Land and Water Conservation Fund Act of 1966 (Sec. 6(f))
16 U.S.C. § 4601-8(f)

Open Space Lands
42 U.S.C. § 1500a(d)

Urban Park and Recreation Recovery Act
16 U.S.C. § 2501 et seq.

National Trails System Act
16 U.S.C. § 1241

1.5 Marine Resources

Deepwater Port Act
33 U.S.C. § 1501, 1503 - 1505

Ocean Dumping
33 U.S.C. § 1401, 1412, 1413, 1414

Marine Protection, Research and Sanctuaries act
16 U.S.C. § 1431-1434

1.6 Transportation

Department of Transportation Act of 1966
(Sec. 4(f)49 U.S.C. § 1653(f)

Federal Aid Highway Act of 1958
23 U.S.C. § 128, 138

Urban Mass Transportation Act of 1964
49 U.S.C. § 1602, 1610

Airport and Airway Development Act of 1970
49 U.S.C. § 1716

Federal Aviation Act
49 U.S.C. § 3334

1.7 Air Quality

Clean Air Act
42 U.S.C. § 7401 et seq.

1.8 Miscellaneous

Intergovernmental Coordination Act of 1968
42 U.S.C. § 4201, 4231, 4233
(A-95 review process, including urban impact analysis)

Demonstration Cities and Metropolitan Development Act of 1966
42 U.S.C. § 3334

Surface Mining Control and Reclamation Act of 1977

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30 U..S.C. § 1201 et seq.

Resources Conservation and Recovery Act of 1976
42 U.S.C. § 3251 et seq.

Noise Control Act of 1972, as amended
42 U.S.C. § 4901 et seq.

PROGRAMS OF GRANTS TO STATES IN WHICH STATE AGENCIES HAVING STATEWIDE JURISDICTION MAY PREPARE EISs

2.1 Fish and Wildlife Service

A. Anadromous Fish Conservation [#15.600]

B. Fish Restoration (Dingell-Johnson) [#15.605]

C. Wildlife Restoration (Pittman-Robertson) [#15.611]

D. Endangered Species Conservation [#16.612]

2.2 National Park Service

A. Outdoor Recreation--Acquisition, Development andPlanning [#15.916] (L&WCF)

B. Historic Preservation Fund Grants-in-Aid [#15.904]

C. Urban Park and Recreation Recovery Program Grants [#15.919]

Note: Citations in brackets refer to the Catalog of Federal Domestic Assistance, Office of Management and Budget, 1986

Excerpts from Department of Interior Manual - 516 DM 2

516 DM 2.3D

D. Notice of Intent (NOI) [CEQ Regulation 1508.22]. A NOI will be prepared as soon as practicable after a decision to prepare an environmental impact statement and shall be published in the Federal Register, with a copy to the Office of Environmental Project Review, and made available to the affected public in accordance with Section 1506.6. Publication of a NOI may be delayed if there is proposed to be more than three (3) months between the decision to prepare new environmental impact statement and the time preparation is actually initiated. The Office of Environmental Project Review will periodically publish a consolidated list of these notices in the Federal Register.

516 DM 2.6

2.6 Scoping [CEQ Regulation 1501.7].

A. The invitation requirement in the CEQ Regulations Section 1501.7(a)(1) may be satisfied by including such an invitation in the NOI.

B. If a scoping meeting is held, consensus is desirable, however, the lead agency is ultimately responsible for the scope of an EIS.

Categorical Exclusions

516 DM 2 Appendix 1

DEPARTMENTAL CATEGORICAL EXCLUSIONS (3/18/82 #2244)

The following actions are categorical exclusions pursuant to 516 DM 2.3A(2). However, environmental documents will be prepared for individual actions within these categorical exclusions if the exceptions listed in 516 DM 2.3A(3) apply.

1.1 Personnel actions and investigations and personnel services contracts.

1.2 Internal organizational changes and facility and office reductions and closings.

1.3 Routine financial transactions, including such things as salaries and expenses, procurement contracts, guarantees, financial assistance, income transfers, and audits.

1.4 Law enforcement and legal transactions, including such things as arrests; investigations; patents; claims; legal opinions; and judicial proceedings including their initiation, processing and/or settlement.

1.5 Regulatory and enforcement actions, including inspections, assessments, administrative hearings, and decisions; when the regulations themselves or the instruments of regulations (leases, permits, licenses, etc.) have previously been covered by the NEPA process or are exempt from it.

1.6 Non-destructive data collection, inventory (including mapping), study, research and monitoring activities.

1.7 Routine and continuing government business, including such things as supervision, administration, operations, maintenance, and replacement.

1.8 Management, formulation, and allocation of the Department's budget at all levels. (This does not exempt the preparation of environmental documents for proposals included in the budget when otherwise required.)

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516 DM 6 Appendix 7

NATIONAL PARK SERVICE CATEGORICAL EXCLUSIONS.

7.4 In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the Service also performs, the following NPS actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2:

A. Actions Related to General Administration

(1) Changes or amendments to an approved action when such changes would cause no or only minimal environmental impact.

2) Land and boundary surveys.

(3) Minor boundary changes.

(4) Reissuance/renewal of permits, rights-of-way or easements not involving environmental impacts.

(5) Conversion of existing permits to rights-of-way, when such conversions do not continue or initiate unsatisfactory environmental conditions.

(6) Issuances, extensions, renewals, reissuances or minor modifications of concession or permits not entailing new construction.

(7) Commercial use licenses involving no construction.

(8) Leasing of historic properties in accordance with 36 CFR 18 and NPS-38.

(9) Preparation and issuance of publications.

(10) Modifications or revisions to existing regulations, or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions or new regulations do not:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

(11) At the direction of the NPS responsible official, actions where NPS has concurrence or coapproval with another bureau and the action is a categorical exclusion for that bureau.

B. Plans, Studies and Reports

(1) Changes or amendments to an approved plan, when such changes would cause no or only minimal environmental impact.

(2) Cultural resources maintenance guides, collection management plans and historic furnishings reports.

(3) Interpretive plans (interpretive prospectuses, audio-visual plans, museum exhibit plans, wayside exhibit plans).

(4) Plans, including priorities, justifications and strategies, for non-manipulative research, monitoring, inventorying and information gathering.

(5) Statements for management, outlines of planning requirements and task directives for plans and studies.

(6) Technical assistance to other Federal, State and local agencies or the general public.

(7) Routine reports required by law or regulation.

(8) Authorization, funding or approval for the preparation of Statewide Comprehensive Outdoor Recreation Plans.

(9) Adoption of approval of surveys, studies, reports, plans and similar documents which will result in recommendations or proposed actions which would cause no or only minimal environmental impact.

(10) Preparation of internal reports, plans, studies and other documents containing recommendations for action which

NPS develops preliminary to the process of preparing a specific Service proposal or set of alternatives for decision.

(11) Land protection plans which propose no significant change to existing land or visitor use.

(12 Documents which interpret existing mineral management regulations and policies, and do not recommend action.

C. Actions Related to Development

(1) Land acquisition within established park boundaries.

(2) Land exchanges which will not lead to significant changes in the use of land.

(3) Routine maintenance and repairs to non-historic structures, facilities, utilities, grounds and trails.

(4) Routine maintenance and repairs to cultural resource sites, structures, utilities and grounds under an approved Historic Structures Preservation Guide or Cyclic Maintenance Guide; or if the action would not adversely affect the cultural resource.

(5) Installation of signs, displays, kiosks, etc.

(6) Installation of navigation aids.

(7) Establishment of mass transit systems not involving construction, experimental testing of mass transit systems, and changes in operation of existing system (e.g., routes and schedule changes).

(8) Replacement in kind of minor structures and facilities with little or no change in location, capacity or appearance.

(9) Repair, resurfacing, striping, installation of traffic control devices, repair/replacement of guardrails, etc., on existing roads.

(10) Sanitary facilities operation.

(11) Installation of wells, comfort stations and pit toilets in areas of existing use and in developed areas.

(12) Minor trail relocation, development of compatible trail networks on logging roads or other established routes, and trail maintenance and repair.

(13) Upgrading or adding new overhead utility facilities to existing poles, or replacement poles which do not change existing pole line configurations.

(14) Issuance of rights-of-way for overhead utility lines to an individual building or well from an existing line where installation will not result in significant visual intrusion and will involve no clearance of vegetation other than for placement of poles.

(15) Issuance of rights-of-way for minor overhead utility lines not involving placement of poles or towers and not involving vegetation management or significant visual intrusion in an NPS-administered area.

(16) Installation of underground utilities in previously disturbed areas having stable soils, or in an existing overhead utility right-of-way.

(17) Construction of minor structures, including small improved parking lots, in previously disturbed or developed areas.

(18) Construction or rehabilitation in previously disturbed or developed areas, required to meet health or safety regulations, or to meet requirements for making facilities to the handicapped.

(19) Landscaping and landscape maintenance in previously disturbed or developed areas.

(20) Construction of fencing enclosures or boundary fencing posing no effect on wildlife migrations.

D. Actions Related to Visitor Use

(1) Carrying capacity analyses.

(2) Minor changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection in accordance with existing regulations.

(3) Changes in interpretive and environmental education programs.

(4) Minor changes in programs and regulations pertaining to visitor activities.

(5) Issuance of permits for demonstrations, gatherings, ceremonies, concerts, arts and crafts shows, etc., entailing only short-term or readily mitigatable environmental disturbance.

(6) Designation of trailside camping zones with no or minimal improvements.

E. Actions Related to Resource Management and Protection

(1) Archeological surveys and permits, involving only surface collection or small-scale test excavations.

(2) Day-to-day resource management and research activities.

(3) Designation of environmental study areas and research natural areas.

(4) Stabilization by planting native plant species in disturbed areas.

(5) Issuance of individual hunting and/or fishing licenses in accordance with State and Federal regulations.

(6) Restoration of noncontroversial native species into suitable habitats within their historic range, and elimination of exotic species.

(7) Removal of park resident individuals of non-threatened/endangered species which pose a danger to visitors, threaten park resources or become a nuisance in areas surrounding a park, when such removal is included in an approved resource management plan.

(8) Removal of non-historic materials and structures in order to restore natural conditions.

(9) Development of standards for, and identification, nomination, certification and determination of eligibility of properties for listing in the National Register of Historic Places and the National Historic Landmark and National Natural Landmark Programs.

F. Actions Related to Grant Programs

(1) Proposed actions essentially the same as those listed in paragraphs A-E above.

(2) Grants for acquisition of areas which will continue in the same or lower density use with no additional disturbance to the natural setting.

(3) Grants for replacement or renovation of facilities at their same location without altering the kind and amount of recreational, historical or cultural resources of the area; or the integrity of the existing setting.

(4) Grants for construction of facilities on lands acquired under a previous NPS or other Federal grant provided that the development is in accord with plans submitted with the acquisition grant.

(5) Grants for the construction of new facilities within an existing park or recreation area, provided that the facilities will not:

(a) conflict with adjacent ownerships or land use, or cause a nuisance to adjacent owners or occupants; e.g., extend use beyond daylight hours;

(b) introduce motorized recreation vehicles;

(c) introduce active recreation pursuits into a passive recreation area

(d) increase public use or introduce noncompatible uses to the extent of compromising the nature and character of the property or causing physical damage to it; or

(e) add or alter access to the park from the surrounding area.

(6) Grants for the restoration, rehabilitation, stabilization, preservation and reconstruction (or the authorization thereof) of properties listed on or eligible for listing on the National Register of Historic Places, at their same location and provided that such actions:

(a) will not alter the integrity of the property or its setting;

(b) will not increase public use of the area to the extent of compromising the nature and character of the property; and

(c) will not cause a nuisance to adjacent property owners or occupants.

516 DM 2.3A(3)

EXCEPTIONS TO CATEGORICAL EXCLUSIONS

(3) The following exceptions apply to individual actions within categorical exclusions. Environmental assessments must be prepared for actions which may:

(a) Have significant adverse effects on public health or safety.

(b) Adversely affect such unique geographic characteristics as historic or cultural resources, park, recreation, or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks.

(c) Have highly controversial environmental effects.

(d) Have highly uncertain environmental effects or involve unique or unknown environmental risks.

(e) Establish a precedent for future action or represent a decision in principle about a future consideration with significant environmental effects.

(f) Be related to other actions with individually insignificant but cumulatively significant environmental effects.

(g) Adversely affect properties listed or eligible for listing in the National Register of Historic Places.

(h) Affect a species listed or proposed to be listed on the List of Endangered or Threatened Species.

(i) Threaten to violate a Federal, State, or local or tribal law or requirements imposed for the protection of the environment or which require compliance with Executive Order 11988 (Floodplain Management),

Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.

RELOCATION AND ACQUISITION POLICY (P.L. 91-646)

1. Purpose and Policy. This chapter provides for the application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, hereafter in this chapter referred to as the Act, to undertakings by State agencies with financial assistance from the Land and Water Conservation Fund program. The Act provides for the uniform and equitable treatment of persons displaced from their homes, businesses or farms and establishes uniform and equitable land acquisition policies for Federal and federally assisted programs.

   In implementation of the Act, it is the policy of the NPS to deal consistently and fairly with all persons whose property is taken for public projects and all persons who are displaced from their homes, businesses or farms.

   The procedures prescribed in this chapter are based on the Act, Federal Management Regulations, Subchapter A, Subpart 101-6.1 and the Department of the Interior final regulations (see Attachment 650.3A).

2. Scope. The provisions of the Act and the regulations in this chapter apply to the acquisition of all real property for, and the relocation of all persons displaced by projects which receive L&WCF assistance for all or a part of the cost thereof. The Act and these regulations apply regardless of whether Land and Water Conservation funds actually contribute to the cost of the real property acquired for the assisted projects.

3. Acquisitions Involving No Federal Assistance. When the purchase of lands or displacement of any person by a State or local government without Federal financial assistance occurs on or after January 2, 1971, eligibility for Land and Water Conservation Fund assistance for the development of the land acquired or upon which the displacement occurred, will be dependent on the following criteria.

   A. If the acquisition or displacement occurred within the two (2) years preceding the time the State submits the application for Federal financial assistance to the Service, the State must provide the assurances required by Sections 210 and 305 of P.L. 91-646 (see Section 650.3.4), unless the State can provide to the Service documented evidence that at the time of the acquisition and last displacement, planning activity to obtain Fund assistance had not been initiated.

   B. When the acquisition or displacement occurred more than two (2) years, but less than five (5) years before the State submits an application for Fund assistance, the State must provide assurances required by Sections 210 and 305 of P.L. 91-646 (see Section 650.3.4),

unless written certification is provided as part of the project application by the head of the State or local government agency sponsoring the project. The Certification will indicate, under penalty for willful misstatement (18 U.S.C. 1001), that at the time of the acquisition and last known displacement, such agency had not yet initiated planning activity to obtain the particular Federal assistance being applied for.

A sample certification is as follows:

I, _____, _____,
(NAME) (TITLE - AGENCY)
hereby certify, under penalty for willful misstatement (18 U.S.C. 1001)* that at the time of the acquisition and last known displacement on the project lands for which this Federal financial assistance is being sought, no planning had been initiated by this agency to obtain this financial assistance.

_____
(SIGNATURE)

_____
(DATE)

* "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

C. If the acquisition and last displacement occurred more than five (5) years before the State applies for Fund assistance the State need not provide the assurances required by Sections 210 and 305 of P.L. 91-646, unless the Service has evidence to indicate that at the time of the acquisition and last known displacement, the State or local government had initiated planning activity to obtain the particular Federal assistance being applied for. In such case, Sections 210 and 305 assurances will be required.

D. For the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, "project" under this section would mean that recreation area or portion thereof, that is needed

to support or qualify the particular project for which the assistance is being requested. Although "project" for the purposes of Relocation Assistance is not necessarily the same term as used in Section 6(f) of the Land and Water Conservation Fund Act, there must be a reasonable basis for any reduction in the Section 6(f) area for Relocation Assistance purposes.

4. Assurances. The Service will not approve any project which will result in the acquisition of real property and/or the displacement of any person unless the State is able to provide the assurances required by Sections 210 and 305 of the Act and the regulations in this Chapter 650.3. These assurances specify that:

A. Fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided under Sections 202, 203, and 204 of the Act (see Part 24, Attachment 650.3A).

B. Relocation assistance programs offering the services described in Section 205 of the Act shall be provided to displaced persons (see Subpart C 24.205, Attachment 650.3.A.).

C. A survey and analysis of available replacement housing has been made in accordance with Department of the Interior Regulations, and that within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with Section 205(c)(3) of the Act (see Subpart C, Attachment 650.3A).

D. In acquiring real property, the State agency will be guided, to the greatest extent practical under State law, by the land acquisition policies set forth in Sections 301 and 302 of the Act (Sections 24.103(a) and 24.104 of Attachment 650.3A).

E. Property owners will be paid or reimbursed for necessary expenses as specified in Sections 303 and 304 of the Act (Sections 24.106 and 24.107 of Attachment 650.3A).

F. The affected persons will be adequately informed of the benefits available under Title II of the Act and the policies and procedures relating to the payment of such benefits (Section 24.203 of Attachment 650.3A).

Terms for compliance with these assurances are contained in the general provisions of the project agreement.

5. Responsibility of the State.

A. The State has the responsibility for implementing the provisions of the Act and the regulations contained in this chapter. The official who has authority to represent and act for the State as the State's Liaison Officer for the Land and Water Conservation Fund program must keep participating State agencies advised on, and assure compliance with, all relocation and acquisition matters as they relate to the Act and these regulations.

B. Project applications will contain an estimate of the number of individuals, families, businesses, and farms being displaced (see Part II, Section A, item 9 and Part III, Section B, item 9 of Attachment 660.3A).

C. The following documentation will be needed for each project which involves acquisition unless waived by the Service.

1. Appraisal documentation including review material and written approval of the appraisal report;

2. A copy of the written offer to purchase including a statement of just compensation (See Section 24.102 Attachment 650.3A);

3. Relocation Plan, advisory services program and appeals procedure where displacement occurred;

4. A statement of difference in value if the purchase price is greater than the approved appraisal of fair market value (see 675.2.7 and Section 24.102(i) of Attachment 650.3A);

5. Documentation showing that the owner or his designated representative has been given an opportunity to accompany the appraiser during his inspection of the property;

6. Evidence that occupants of property acquired were furnished at the time of initiation of negotiations adequate information explaining their eligibility to payments under Title II of the Act (Section 24.203 of Attachment 650.3A);

7. Copies of waivers where applicable (see Section 24.7 of Attachment 650.3A);

8. Appropriate claims forms and supporting documentation; and

9. Evidence of purchase price and of title.

6. Service Action on Relocation and Acquisition Documents. Except for statements of difference in value and waivers to benefits, the Service

will not generally require the documentation under 650.3.5.C. to be submitted at the time of billing unless otherwise requested. Waivers of documentation requirements will be requested by the State in accordance with 675.2.5. All required documentation should be kept on file in the office of the State Liaison Officer for purposes of audit and State inspections.

7. Relocation Assistance Advisory Services. As outlined in Section 124.205 of Attachment 650.3A, the agency shall carry out a relocation assistance advisory program, which includes in part, determining the relocation needs of each person to be displaced and providing an explanation of payments and other assistance for which the person may be eligible. All services required by Section 24.205 must be provided by the State or local sponsor.

8. Appeals. Situations may occur when an applicant for payments under the Act will be aggrieved by a displacing agency's determination as to the applicant's eligibility for payment or the amount of payment. Each State shall establish procedures that provide for adequate review by the involved State agency of the concerns of the person aggrieved. The procedures should assure that a person aggrieved may have his application reviewed by the head of the State agency. The procedures should also provide for an appeals process that can be followed should decisions remain disputed following review by the head of the State agency. Each State Liaison Officer shall furnish to NPS a description of the review and appeal procedures established by the State.

   The State should provide for possible resolution of an appeal by the displacing agency with a final appeal to the State. The procedures shall insure that:

   A. Each appellant applicant has the opportunity to present the basis of disagreement with the displacing agency's determination of eligibility for payment or the amount of payment.

   B. Each appeal will be decided promptly.

   C. Each appeal decision will include a statement of the reasons upon which it is based and a copy of such decision will be furnished the appellant.

   D. Each appellant applicant has a final appeal to the State.

   E. All eligible relocatees shall be furnished a written notice of their right to appeal. Such notification may be provided by brochure if the right to appeal is adequately described therein.

9. Appraisals.

A. Reference is made in Section 24.103(a) of 650.3 Attachment A to the current Uniform Appraisal Standards for Federal Land Acquisition. Copies of these standards are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Policies respecting methods of acquisition and appraisal as set forth in Section 675.2.1 conform with these standards and are to be followed. The abbreviated appraisal as set forth in Section 675.2.6B, will be acceptable for use for projects which involve acquisition with a value estimated between $5,000 and $25,000. Where a parcel has a value of less than $5,000 the Service will accept a written finding of value as set forth in Section 675.2.6.C.

B. Except for projects involving donations, the State will have responsibility for reviewing and approving project-related appraisals prior to initiation of negotiations (see Section 675.2.6). NPS reviews will be limited to spot checking and post audit program reviews. NPS reviews shall include an evaluation of the adequacy of the appraisal in terms of thoroughness, reasonableness, impartiality and conformance to the Uniform Appraisal Standards for Federal Land Acquisition to the extent appropriate. Where the review results in substantive concerns as to the adequacy of the approved appraisal, the State Liaison Officer will be responsible for providing NPS with supplemental appraisal documentation or a new appraisal in accordance with the review findings. The value established by the revised or new appraisal will be used as the basis for determining just compensation and for matching assistance.

10. Acquisition at less than Just Compensation. Only in unusual circumstances will real property be acquired at less than established just compensation as determined, at the minimum, by an approved appraisal.

Nothing in these regulations is to be construed to prevent or deter a property owner from making a full or partial donation of property. In the case of donations, full compliance is not practicable with regard to making a prompt offer to acquire the property for the full amount so established as just compensation.

In those circumstances involving a partial donation, documentation must include evidence that the owner has been provided with a statement of just compensation. A written statement by the owner that he is making a partial donation is also required. A written offer to purchase and a statement of just compensation are not necessary when acquisition is by full donation-the legal act of donation itself precludes the necessity for these actions. This documentation relates only to

acquisition. Relocation benefits as provided by these regulations must still be complied with in full under all circumstances.

To determine the amount eligible for matching, an approved appraisal is necessary for all donations partial or full, as required by Section 675.2.5E.

11. Relocation Report. Section 24.9 of Attachment 650.3A requires each Bureau and Office within the Department having responsibilities for federally assisted programs that come within the purview of P.L. 91-646 to prepare and submit a report on its activities not more frequently than every three years unless the Federal funding agency shows good cause. In order to accumulate the required statistical data, copies of Uniform Relocation Assistance and Real Property Acquisition Statistical Report Form will be submitted in accordance with Appendix B to Part 24 of Attachment 650.3A.

12. State Agency. For purposes of this part and its appendices, State agency shall include any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

13. Final Property Management Regulations of the Department of Interior. The purpose of this section is to prescribe policies and procedures to be applied by State agencies which receive assistance from the Land and Water Conservation Fund. The final property management regulations of the Department of the Interior, issued as an appendix to this chapter, have been prepared to cover both Federal and federally assisted programs. In addition, all other requirements and procedures of the Departmental regulations should be read as applicable to State agencies and agency heads where federally assisted programs are involved to the same extent as they apply to Federal agencies and agency heads in strictly Federal programs. This recognition of authority and responsibility of the State Liaison Officer to make determinations under the Act with respect to programs and projects assisted by the Land and Water Conservation Fund does not negate the authority and responsibility of the Director, National Park Service in administering the Fund program and therefore for providing policy and guidance to insure the proper implementation of P.L. 91-646.

Department of the Interior final property management regulations are made a part of this chapter as Attachment 650.3A.

Application by displaced persons for reimbursement of moving and related expenses under the Act may be accomplished by using Department of Interior Forms DI-380 a-e. (see Attachment 650.3B.). State approved forms which accomplish the same purpose may be used in lieu

of these forms if prior approval is obtained from NPS through the Regional Office.

The payment for any increased interest costs including points, incurred by the displaced person, shall be determined in accordance with section 24.401(d) of Attachment 650.3A. An example of computing a payment for increased interest costs is provided in Appendix A to Part 24 of Attachment 650.3A.

PART 24-UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition

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Policies Act of 1970 Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note); and 49 CFR 1.48(cc).

Subpart A-General

§24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

§24.2 Definitions.

(a) *Agency.* The term "Agency" means the Federal agency, State, State agency, or person that acquires real property or displaces a person.

(1) *Acquiring agency.* The term "acquiring agency" means a State agency, as defined in paragraph (a)(4) of this section, which has the authority to acquire property by eminent domain under State law, and a State agency or person which does not have such authority. Any Agency or person solely acquiring property pursuant to the provisions of §24.101(a) (1), (2), (3), or (4) need not provide the assurances required by §24.4(a)(1) or (2).

(2) *Displacing agency.* The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(3) *Federal agency.* The term "Federal agency" means any department, Agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(4) *State agency.* The term "State agency" means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(b) *Appraisal.* The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(c) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public: or

(3) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(d) *Comparable replacement dwelling.* The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe and sanitary as described in paragraph (f) of this section;

(2) Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it

performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is ``equal to or better than'' the displacement dwelling. (See Appendix A of this part);

(3) Adequate in size to accommodate the occupants;

(4) In an area not subject to unreasonable adverse environmental conditions;

(5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also §24.403(a)(2).);

(7) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A of this part.); and

(8) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in §24.401(c), all increased mortgage interest costs as described at §24.401(d) and all incidental expenses as described at §24.401(e), plus any additional amount required to be paid under §24.404, Replacement housing of last resort.

(ii) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at §24.402(b)(2).

(iii) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under § 24.404, Replacement housing of last resort.

(e) *Contribute materially.* The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5000; or

(2) Had average annual net earnings of at least $1000; or

(3) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(f) *Decent, safe, and sanitary dwelling.* The term "decent, safe,and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weather tight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or thorough a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(g) *Displaced person* - (1)*General.* The term "displaced person" means any person who moves from the real property or moves his or her personal property from the real property: (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at §24.401(a) and §24.402(a)):

(i) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

(ii) As a direct result of rehabilitation or demolition for a project; or

(iii) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under §24.205(c), and moving expenses under §§24.301, 24.302 or 24.303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(i) A person who moves before the initiation of negotiations (see also §24.403(d)), unless the Agency determines that the person was displaced as a direct result of the program or project; or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(iv) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see Also Appendix A of this part); or

(v) An owner-occupant who moves as a result of an acquisition as described at §24.101(a) (1) and (2) , or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.); or

(vi) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

(vii) A person who, after receiving a notice of relocation eligibility (described at §24.203(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(viii) An owner-occupant who voluntarily conveys his or her property, as described at §24.101(a) (1) and (2), after being informed

in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or

(ix) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(x) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303; or

(xi) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations (see paragraph (y) of this section), or a person who has been evicted for cause, under applicable law, as provided for in §24.206.

(h) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(i) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(j) *Federal financial assistance.* The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(k) *Initiation of negotiations.* Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:

(1) Whenever the displacement results from the acquisition of the real property by a Federal agency or State agency, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery to the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.

(2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(3) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Lead agency.* The term "lead agency" means the Department of Transportation acting through the Federal Highway Administration.

(m) *Mortgage.* The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(n) *Nonprofit organization.* The term "nonprofit organization" means an organization that is incorporate under the applicable laws of a State as a non-profit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(o) *Notice of intent to acquire or notice of eligibility for relocation assistance.* Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from

property acquired prior to the commitment of Federal financial assistance to the activity, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.

(p) *Owner of a dwelling.* A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property;

(1) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (p) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(q) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(r) *Program or project.* The phrase "program or project" means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

(s) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(t) *Small business.* A business having at least one, but not more than 500 employees working at the site being acquired or displaced by a program or project.

(u) *State.* Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands or a political subdivision of any of these jurisdictions.

(v) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(w) *Uneconomic remnant.* The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.

(x) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 *et seq.* ; Pub. L. 91-646), and amendments thereto.

(y) *Unlawful occupancy.* A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy.

(z) *Utility costs.* The term "utility costs" means expenses for heat, lights, water and sewer.

(aa) *Utility facility.* The term "utility facility" means any electric, gas, water, steampower, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(bb) *Utility relocation.* The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is

necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

§24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, or local law which is determined by the Agency to have the same purpose and effect as such payment under this part. (See Appendix A of this part, 24.3.)

§24.4 Assurances, monitoring and corrective action.

(a) *Assurances* -(1) Before a Federal agency may approve any grant to, or contract, or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to section 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency which both acquires real property and displaces persons may combine its section 210 and section 305 assurances in one document.

(2) If a Federal agency or State agency provides Federal financial assistance to a "person" causing displacement, such Federal or State agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal agency may provide Federal financial assistance to a State agency after it has accepted a certification by such State agency in accordance with the requirements in Subpart G of this part.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with this part, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (Also see §24.603, Subpart G.)

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at §24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§24.6 Administration of jointly-funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies, other than a Federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. In the unlikely event that agreement among the Agencies cannot be reached as to which agency shall be the cognizant Federal agency, then the lead agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities which are

subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

§24.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§24.8 Compliance with other laws and regulations.

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

(f) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234).

(g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

(h) Executive Order 11063 - Equal Opportunity and Housing, as amended by Executive Order 12259.

(i) Executive Order 11246 - Equal Employment Opportunity.

(j) Executive Order 11625 - Minority Business Enterprise.

(k) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

(l) Executive Order 12250 - Leadership and Coordination of Non-Discrimination Laws.

(m) Executive Order 12259 - Leadership and Coordination of Fair Housing in Federal Programs.

(n) Executive Order 12630 - Governmental Actions and Interference with Constitutionally Protected Property Rights.

§24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause. The report shall be prepared and submitted in the format contained in Appendix B of this part.

§24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under §24.106 or §24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to fine an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B - Real Property Acquisition

§24.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this subpart apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs except for:

(1) Voluntary transactions that meet all of the following conditions:

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner of what it believes to be the fair market value of the property.

(2) Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property.

(3) The acquisition of real property from a Federal agency, State, or State agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(b) *Less-than-full-fee interest in real property.* In addition to fee simple title, the provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent easements. (See Appendix A of this part, §24.101(b).)

(c) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See 24.4(a).)

§24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections, including the agency's obligation to secure an appraisal, provided to the owner by law and this part. (See also §24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.* (1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in §24.102(c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at $2,500 or less, based on a review of available data.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also §24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with §24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other

coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See §24.2(w).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

§24.103 Criteria for appraisals.

(a) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method

of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at §24.2(s)) of the retained improvement.

(d) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(e) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is $2,500, or less.

§24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal,the reviewing appraiser may develop appraisal documentation in accordance with §24.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

§24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a

tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at §24.2(s).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment,assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

§24.106 Expenses incidental to transfer of title to the Agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

§24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in §24.102(c)(2).

Subpart C - General Relocation Requirements

§24.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at §24.2(g).

§24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's

relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in §24.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice* -(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See §24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

§24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at 24.2(d)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency

as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§24.205 Relocation planning, advisory services, and coordination.

(a) *Relocation planning.* During the early stages of development, Federal and Federal-aid programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the lead agency will establish criteria and procedures for such use upon the request of the Federal agency funding the program or project.

(c) *Relocation assistance advisory services* -(1) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(ii) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the

person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in §24.204(a).

(A) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see §24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(B) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards.(See §24.2 (d) and (f).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(C) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(D) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(iii) Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available,and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(vi) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (Also see §24.6, Subpart A.)

§24.206 Eviction for cause.

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:

(a) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

(b) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(c) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

§24.207 General requirements-claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by

such documentation as maybe reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing* -(1) All claims for a relocation payment shall be filed with the Agency within 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by §24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§24.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D-Payments for Moving and Related Expenses

§24.301 Payment for actual reasonable moving and related expenses-residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at §24.2(g)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated

household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f)The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under 24.305, as the Agency determines to be reasonable and necessary.

§24.302 Fixed payment for moving expenses-residential moves.

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under §24.301. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration. This includes a provision that the expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.

§24.303 Payment for actual reasonable moving and related expenses-nonresidential moves.

(a) Eligible costs. Any business or farm operation which qualifies as a displaced person (defined at §24.2(g)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at §24.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for:

(i) Planning the move of the personal property,

(ii) Moving the personal property, and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for

payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under §24.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in §24.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff.At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

§24.304 Reestablishment expenses-nonresidential moves.

In addition to the payments available under §24.303 of this subpart, a small

business, as defined in §24.2(t), farm or nonprofit organization may be eligible to receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They may include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs, not to exceed $1,500 for exterior signing to advertise the business.

(4) Provision of utilities from right-of-way to improvements on the replacement site.

(5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

(6) Licenses, fees and permits when not paid as part of moving expenses.

(7) Feasibility surveys, soil testing and marketing studies.

(8) Advertisement of replacement location, not to exceed $1,500.

(9) Professional services in connection with the purchase or lease of a replacement site.

(10) Estimated increased costs of operation during the first 2 years at the replacement site, not to exceed $5,000, for such items as:

(i) Lease or rental charges,

(ii) Personal or real property taxes,

(iii) Insurance premiums, and

(iv)Utility charges, excluding impact fees.

(11) Impact fees or one-time assessments for anticipated heavy utility usage.

(12) Other items that the Agency considers essential to the reestablishment of the business.

(13) Expenses in excess of the regulatory maximums set forth in paragraphs (a) (3), (8) and (10) of this section may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site.In such cases the regulatory limitation for reimbursement of such costs may, at the request of the Agency, be waived by the Federal agency funding the program or project, but in no event shall total costs payable under this section exceed the $10,000 statutory maximum.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in paragraph (a)(5) of this section.

(4) Interest on money borrowed to make the move or purchase the replacement property.

(5) Payment to a part-time business in the home which does not contribute materially to the household income.

§24.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under §24.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d)Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in §24.304(a)(10); or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§24.303(a)(3)and 24.304(a); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

§24.306 Fixed payment for moving expenses-nonresidential moves.

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§24.303 and 24.304. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site.

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others.

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see §24.2(e)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at §24.2(i)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of $1,000 to $20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (See Appendix A of this part).

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes

during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

§24.307 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see §24.2 (aa) and (bb)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way; and

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is in accordance with State law.

(b) For the purposes of this section, the term ``extraordinary expenses'' means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See Appendix A, of this part, §24.307.)

Subpart E-Replacement Housing Payments

§24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or

(ii) The date the displacing agency's obligation under §4.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $22,500. (See also §24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential* -(1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with §24.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see §24.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at §24.2(f)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, §24.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs(d) (1) through (5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the

event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buy down determination the payment will be prorated and reduced accordingly. (See Appendix A of this part.) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage (s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or §24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed $5,250, computed and disbursed in accordance with §24.402(b).

§24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment*- (1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $5,250 for rental assistance. (See also §24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances); or

(ii) Thirty (30) percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.); or

(iii) The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(3) *Manner of disbursement.* A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by §24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) *Downpayment assistance payment* -(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the discretion of the Agency, a downpayment assistance payment may be increased to any amount not to exceed $5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under §24.401(b) if he or she met the 180-day occupancy requirement. An Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner,so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under §24.401(a) is not eligible for this payment. (See also Appendix A of this part, §24.402(c).)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at §24.2(d)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling,to the extent justified by local market data (see also §24.205(a)(2) and Appendix A of this part). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement

dwelling for purposes of computing the payment.

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at 24.2(f).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling; or

(2) Purchases and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he or she owns or purchases; or

(4) Constructs a dwelling on a site he or she owns or purchases; or

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under §24.402(b) is eligible to receive a payment under §§24.401 or 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period.Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under §§24.401 or 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

§24.404 Replacement housing of last resort.

(a) *Determination to provide replacement housing of last resort.* Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in §§24.401 or 24.402, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:
(i) The availability of comparable replacement housing in the program or project area; and
(ii) The resources available to provide comparable replacement housing; and
(iii) The individual circumstances of the displaced person; or
(2) By a determination that:
(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and,therefore, last resort housing assistance is necessary for the area as a whole; and
(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs. (Will project delay justify waiting for less expensive comparable replacement housing to become available?)
(b) *Basic rights of persons to be displaced.* Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.
(c) *Methods of providing comparable replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.
(1) The methods of providing replacement housing of last resort include, but are not limited to:
(i) A replacement housing payment in excess of the limits set forth in §§24.401 or 24.402. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.
(ii) Rehabilitation of and/or additions to an existing replacement dwelling.
(iii) The construction of a new replacement dwelling.
(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.
(v) The relocation and, if necessary, rehabilitation of a dwelling.
(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.
(vii) The removal of barriers to the handicapped.
(viii) The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.
(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see Appendix A, of this part, §24.404), including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with §24.2(d)(2).
(3) The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person's financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

Subpart F-Mobile Homes

§24.501 Applicability.

This subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§24.502 Moving and related expenses-mobile homes.

(a) A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with §24.301. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under §24.303. However, if the mobile home is not acquired, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at §24.503(a)(3), the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

(b) The following rules apply to payments for actual moving expenses under §24.301:

(1) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling,moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(2) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe, and sanitary, and the Agency determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

(3) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

§ 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

(a) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed $22,500, under §24.401 if:

(1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at §24.401(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not and cannot economically be made decent, safe, and sanitary; or

(ii) Cannot be relocated without substantial damage or unreasonable cost; or

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) If the mobile home is not acquired, and the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at §24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

§24.504 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $5,250, under §24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days

immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at §24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at §24.503(a)(3).

§24.505 Additional rules governing relocation payments to mobile home occupants.

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However,the total replacement housing payment under Subpart E shall not exceed the maximum payment (either $22,500 or $5,250) permitted under the section that governs the computation for the dwelling. (See also §24.403(b).)

(b) *Cost of comparable replacement dwelling* -(1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under 24.401(c), the cost of a comparable replacement dwelling is the sum of:

(i) The value of the mobile home,

(ii) The cost of any necessary repairs or modifications, and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under this part, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this part.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under this part, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however,be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

Subpart G-Certification

§24.601 Purpose.

This subpart permits a State agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by §24.4 of this part.

§24.602 Certification application.

(a) *General.* (1) The State governor, or his or her designee, on behalf of any State agency or agencies may apply for certification in accordance with this section.

(2) The governor may designate a lead agency to administer certification in accordance with this section.

(b) *Responsibilities of State agency-* (1) The State agency's application shall be submitted to the governor, or his or her designee,for approval or disapproval.

(2) The State agency application shall contain a statement that the State agency shall carry out the responsibilities imposed by the Uniform Act. The State agency application shall include a copy of the State laws and regulations which shall accomplish the purpose and effect of the Uniform Act.

(c) *Responsibilities of governor or his or her designee.* (1) The governor, or his or her designee, shall approve or disapprove the State agency's application.

(2) The governor, or his or her designee, shall have discretion to disapprove any State agency application.

(3) The governor, or his or her designee, shall analyze State law and regulations and shall certify that they accomplish the purpose and effect of the Uniform Act.

(4) The governor, or his or her designee, shall determine in writing whether the State agency's professional staffing is adequate to fully implement the State law and regulations.

(5) If the State agency's application is approved by the governor, or his or her designee, it shall be transmitted to the Federal agency providing financial assistance to the State agency, with an information copy to the Federal lead agency.

(6) When a determination is received from the Federal funding agency, the governor, or his or her designee, shall notify the State agency.

(d) *Responsibilities of Federal funding agency.* (1) The Federal funding agency shall accept the approved application for certification provided by the governor or his or her designee and shall not conduct an independent review unless or until future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

(2) The Federal funding agency shall transmit all complete, approved applications, for certification to the Federal lead agency.

(3) At the same time as transmission to the Federal lead agency or during the public comment period, the Federal funding agency shall provide to the lead agency its written assessment of the State agency's capabilities to operate under certification.

(4) The Federal funding agency shall promptly notify the governor, or his or her designee, of the Federal lead agency's determination described in paragraph (e)(2) of this section.

(5) The Federal funding agency shall recognize the State agency's certification within 30 days of the Federal lead agency's finding.

(e) *Responsibilities of Federal lead agency.* (1) The lead agency shall:

(i) Accept the approval provided by the governor, or his or her designee, and shall not conduct an independent review, except as provided for in paragraphs (e)(1)(ii), (iii) and (iv) of this section, unless future monitoring or other appropriate indicators reveal program deficiencies originating therefrom;

(ii) Analyze the extent to which the provisions of the applicable State laws and regulations accomplish the purpose and effect of the Uniform Act, with particular emphasis on the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to persons in such categories;

(iii) Provide a 60-day period of public review and comment, and solicit and consider the views of interested general purpose local governments within the State, as well as the views of interested Federal and State agencies and consider all comments received as a result; and

(iv) Consider any extraordinary information it believes to be relevant.

(2) After considering all the information provided, the lead agency shall either make a finding that the State agency will carry out the Federal agency's Uniform Act responsibility in accordance with State laws and regulations which shall accomplish the same purpose and effect as the Uniform Act, or shall make a determination that a finding cannot be made; and shall so inform the Federal funding agency.

§24.603 Monitoring and corrective action.

(a) The Federal lead agency shall, in coordination with other Federal agencies, monitor from time to time State agency implementation of programs or projects conducted under the certification process and

the State agency shall make available any information required for this purpose.

(b) A Federal agency that has accepted a State agency's certification pursuant to this subpart should withhold its approval of any of its Federal financial assistance to any project, program, or activity, in progress or to be undertaken by such State agency, if it is found by the Federal agency that the State agency has failed to comply with the applicable State law and regulations implementing those provisions of the Uniform Act for which the State agency would otherwise have provided the assurances required by sections 210 and 305 of the Uniform Act. The Federal agency may withhold Federal financial assistance if the certifying State agency fails to comply with the applicable State law and regulations implementing other provisions of the Uniform Act. The Federal agency shall notify the lead agency at least 15 days prior to any decision to withhold funds under this subpart. The lead agency may consult with the Federal agency upon receiving such notification.The lead agency will also inform other Federal agencies which have accepted certification under this subpart from the same State agency of the pending action.

(c) A Federal agency may, after consultation with the lead agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State agency fails to comply with its certification or with applicable State law and regulations. The Federal agency shall initiate consultation with the lead agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The lead agency will also inform other Federal agencies which have accepted a certification under this subpart from the same State agency, and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the lead agency report biennially to the Congress on State agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the lead agency may require periodic information or data from affected Federal or State agencies.

Appendix A to Part 24 - Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A-General

Section 24.2 Definitions

Section 24.2(d)(2) Definition of comparable replacement dwelling. The requirement in 24.2(d)(2) that a comparable replacement dwelling be "unctionally equivalent"to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is ``adequate to accommodate" the displaced person) may be found to be ``functionally equivalent" to a larger but very run-down substandard displacement dwelling.

Section 24.2(d)(7) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a

person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing program, the rental assistance payment under §24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 24.2(g)(2) Persons not displaced. Section 24.2(g)(2)(iv) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced,but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with 24.10.

Section 24.2(k) Initiation of negotiations. This section of the part; provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section 24.3 No Duplication of Payments

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

Section 24.9 Recordkeeping and Reports

Section 24.9(c) Reports. This paragraph allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (see Appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B-Real Property Acquisition

Section 24.101 Applicability of Acquisition Requirements

Section 24.101(b) Less-than-full-fee interest in real property. This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section 24.102 Basic Acquisition Policies

Section 24.102(d) Establishment of offer of just compensation. The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures. It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession. It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental. Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value *** to a short-term occupier." Generally, the Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.103 Criteria for Appraisals

Section 24.103(a) Standards of appraisal. In paragraph (a)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 24.103(b) Influence of the project on just compensation. As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(e) Conflict of interest. The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, §24.103(e) provides that the same person may both appraise and negotiate an acquisition, if the value is $2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with §24.104. This includes appraisals of real property valued at $2,500, or less.

Section 24.104 Review of appraisals

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes

a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

Section 24.106 Expenses Incidental to Transfer of Title to the Agency

Generally, the Agency is able to pay such incidental costs directly and, where feasible,is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Subpart C-General Relocation Requirements

Section 24.204 Availability of Comparable Replacement Dwelling Before Displacement

Section 24.204 (a) General. This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, §24.204(a) requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 24.205 Relocation Assistance Advisory Services

Section 24.205(c)(2)(ii)(C) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 24.207 General Requirements-Claims for Relocation Payments

Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in §24.303(c).

Subpart D-Payment for Moving and Related Expenses

Section 24.306 Fixed Payment for Moving Expenses-Nonresidential Moves

Section 24.306(d) Nonprofit organizations. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

Section 24.307 Discretionary Utility Relocation Payments

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching

such agreement, the practices in the Federal Highway Administration regulation, 23 CFR 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Subpart E-Replacement Housing Payments

Section 24.401 Replacement Housing Payment for 180-Day Homeowner-Occupants

Section 24.401(a)(2). The provision for extending eligibility for a replacement housing payment beyond the one year period for good cause means that an extension may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction of a replacement dwelling or other like circumstances should cause delays in occupying a decent, safe, and sanitary replacement dwelling.

Section 24.401(c) Price differential. The provision in §24.401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

Section 24.401(d) Increased mortgage interest costs. The provision in §24.401(d) set forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the "buydown."

The remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage must be known to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

Sample Computation

Old Mortgage:	
Remaining Principal Balance	$50,000
Monthly Payment (principal and interest)	458.22
Interest rate (percent)	7
New Mortgage:	
Interest rate (percent)	10
Points	3
Term (years)	15

Remaining term of the old mortgage is determined to be 174 months. (Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee). However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of $458.22 at 10%-$42,010.

	$50,000.00
	-42,010.18
Increased mortgage interest costs	7,989.82
3 points on $42,010.18	1,260.31
Total buydown necessary to maintain payments at $458.22/month	9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage ($42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were $35,000, the buydown payment would be $7,706.57 ($35,000 ∏ by $42,010.18 = .8331; $9,250.13 X .83 =$7,706.57).

The Agency is obligated to inform the person of the approximate amount of this payment and that he or she must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this

payment. The displacee is also to be advised of the interest rate and points used to calculate the payment.

Section 24.402 Replacement Housing Payment for 90-Day Occupants

The downpayment assistance provisions in §24.402(c) are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the $5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing agency should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects. It is recommended that displacing agencies coordinate with each other to reach a consensus on a uniform procedure for the State and/or the local jurisdiction.

For purposes of this section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the Agency determines is necessary.

Section 24.403 Additional Rules Governing Replacement Housing Payments

Section 24.403(a)(1). The procedure for adjusting the asking price of comparable replacement dwellings requires that the agency provide advisory assistance to the displaced person concerning negotiations so that he or she may enter the market as a knowledgeable buyer. If a displaced person elects to buy one of the selected comparables, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.

Section 24.404 Replacement Housing of Last Resort

Section 24.404(b) Basic rights of persons to be displaced. This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under §24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at §24.2(p). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing comparable replacement housing. The use of cost effective means of providing comparable replacement housing is implied throughout the subpart. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost-effective.

Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the

occupants and no other large comparable dwellings are available in the area.

Subpart F-Mobile Homes

Section 24.503 Replacement Housing Payment for 180-Day Mobile Homeowner-Occupants

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under §24.401 and a replacement housing payment for a site computed under §24.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under §24.401 to assist in the purchase of a replacement site or, under §24.402, to assist in renting a replacement site.

Appendix B to Part 24 - Statistical Report Form

This appendix sets forth the statistical information collected from Agencies in accordance with 24.9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Pub. L. 100-17, 101 Stat. 132.
2. *Report period.* Activities shall be reported on a Federal fiscal year basis, i.e., October 1 through September 30.
3. *Where and when to submit report.* Submit an original and two copies of this report to (*Name and Address of Federal Agency*) as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15.
4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.
5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.
6. *Statutory references.* The references in Part B indicate the section of the Uniform Act that authorizes the cost.

Part A. Persons displaced

Report in Part A the number of persons ("households," "businesses, including nonprofit organizations," and "farms") who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, *not* by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

Part B. Relocation payments and expenses

Columns (A) and (B). Report in Column (A) the number of displacements during the report year. Report in Column (B) the total amount represented by the displacements reported in Column (A).
Line 7A is a new line item for reporting the business reestablishment expense payment.
Lines 7A and 9, Column (B). Report in Column (B) the amount of costs that were included in the total amount approved on Lines 6 and 8, Column(B).
Lines 12 A and B. Report in Column (A) the number of households displaced by project or program activities which were provided assistance in accordance with section 206(a) of the Uniform Act. Report in Column(B) the total financial assistance under section 206(a) allocable to the households reported in Column (A). (If a household received financial assistance under section 203 or section 204 as well as under section 206(a) of the Uniform Act, report the household as a displacement in Column (A), but in Column (B) report *only* the amount of financial assistance allocable to section 206(a). For example, if a tenant-

household receives a payment of $7,000 to rent a replacement dwelling, the sum of $5,250 shall be included on Line 10, Column (B), and $1,750 shall be included on Line 12B, Column (B).)

Line 13. Report on Line 13 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under section 205 of the Uniform Act.

Line 15. Report on Line 15 the total number of relocation appeals filed during the fiscal year by aggrieved persons.

Part C. Real property acquisition subject to Uniform Act

Line 16, Columns (A) and (B). Report in Column (A) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (B) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved.

UNIFORM RELOCATION ASSISTANCE
AND REAL PROPERTY ACQUISITION
STATISTICAL REPORT FORM

Form Approved
OMB No:
Exp. Date:
Attachment-Appendix B

FEDERAL FISCAL YEAR ENDING SEPT. 30, 19__

REPORTING AGENCY _____

CITY/COUNTY/STATE _____

FEDERAL FUNDING AGENCY _____

The burden for this report is estimated to average hours per response, including reviewing instructions, searching data sources, gathering/ maintaining data, and completing/reviewing the report. Send comments to: Federal Highway Administration, Office of Right-of-Way, Washington, D.C. 20590 ant to: Office of Management and Budget, Paperwork Reduction Project (2105-0508), Washington, D.C. 20503.

PART A. PERSONS DISPLACED BY ACTIVITIES SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR			
ITEM	TOTAL (A)	OWNERS (B)	TENANTS (C)
1. HOUSEHOLDS (FAMILIES & INDIVIDUALS)			
2. BUSINESSES & NONPROFIT ORGANIZATIONS			
3. FARMS			

PART B. RELOCATION PAYMENTS & EXPENSES UNDER THE UNIFORM ACT DURING THE FISCAL YEAR			
ITEM		NO. OF DISPLACEMENTS	AMOUNT (B)
4. PAYMENTS FOR MOVING HOUSEHOLDS	ACTUAL EXPENSES-SEC. 202(A)		
5. PAYMENTS FOR MOVING HOUSEHOLDS	ACTUAL EXPENSES-SEC 202(A)		
6. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO	SCHEDULE PAYMENT/DISLOCATION ALLOWANCE-SEC. 202(B)		
7. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO	IN LIEU PAYMENTS-SEC. 202(C)		
7A. NO. OF CLAIMS AND AMOUNT ON LINE 6 ATRIBUTABLE TO REESTABLISHMENT EXPENSES			
8. REPLACEMENT HOUSING PAYMENTS FOR 180-DAY HOMEOWNERS-SEC. 203(A)			
9. NO. OF CLAIMS AND AMOUNT OF LINE 8 ATTRIBUTABLE TO INCREASED MORTGAGE INTEREST COSTS			
10. RENTAL ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(1)			
11. DOWNPAYMENT ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(2)			
12A. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A)	OWNERS		
12B. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A)	TENANTS		
13. RELOCATION ADVISORY SERVICES COSTS-SEC. 205		[redacted]	
14. TOTAL (SUM OF LINES 4(B) THROUGH 13(B), EXCLUDING LINES 7A AND 9)		[redacted]	
15. RELOCATION GREVANCES FILED DURING THE FISCAL YEAR IN CONNECTION WITH PROJECT/PROGRAM			[redacted]

PART C. REAL PROPERTY ACQUISITION SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR	NO. OF PARCELS (A)	COMPENSATION (B)
ITEM		
16. TOTAL PARCELS ACQUIRED		
17. TOTAL PARACELS ACQUIRED BY CONDEMNATION INCLUDED ON LINE 16 WHERE PRICE DISAGREEMENT WAS INVOLVED		[redacted]

CULTURAL, ARCHEOLOGICAL AND HISTORIC PRESERVATION

1. General. The purpose of this Chapter is to provide guidance on the implementation of the National Historic Preservation Act of 1966, as amended, (P.L. 89-655); the National Environmental Policy Act of 1969, as amended, (P.L. 91-190) as it pertains to cultural resources; Executive Order 11593; and the Archeological and Historic Preservation Act of 1974 (P.L. 93-291), as amended.

   The National Park Service (NPS), under Section 1 of Executive Order 11593, has responsibility, in consultation with the Advisory Council on Historic Preservation, to institute procedures to assure that L&WCF assisted projects are carried out in a manner consistent with national goals relative to the preservation and enhancement of non-federally owned sites, structures, and objects of historical, architectural or archeological significance. Section 106 of the National Historic Preservation Act of 1966, as amended, (P.L. 89-655) requires the Service to determine whether L&WCF assisted projects affect properties listed in or eligible for listing in the National Register of Historic Places, and, prior to project approval, where there is an effect, to allow the Advisory Council a reasonable opportunity to comment on the proposed undertaking. The Service is also required by Section 2(c) of the Executive Order, to assure that if a property listed in or eligible for listing in the National Register is to be affected as a result of a Fund-assisted project, steps are taken to ensure documentation of the property. It shall be NPS policy to implement the above cited statutory requirements and Executive Order in such a manner as best serves the public interest and is consistent with the provisions of the Land and Water Conservation Fund Act of 1965, as amended.

2. Definitions.

   A. National Register. The National Register of Historic Places.

   B. Properties Eligible for Listing on the National Register. Any property determined by the Keeper of the National Register as being eligible for listing on the National Register and/or any property which is not so determined but which may meet the criteria for listing in the National Register.

   C. SHPO. The State Historic Preservation Officer.

   D. NEPA Process. The process for the consideration of environmental impacts during project planning. This may include the preparation of an environmental assessment or Environmental Impact Statement, pursuant to the National Environmental Policy Act of 1969, as amended.

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E. **Advisory Council.** The Advisory Council on Historic Preservation (ACHP).

F. **Undertaking.** Under 36 CFR 800.2(c)(2), all L&WCF assisted projects are Federal undertakings. However, for the purposes of this chapter, planning projects shall not be included in this definition.

G. **Cultural Resources.** Any district, site, building, structure, or object significant in American history, architecture, archeology, engineering or culture at the national, State or local level.

H. **Area of Impact.** The geographical area within which primary effects generated or caused by the undertaking or generated by activities or facilities directly supporting the undertaking, could reasonably be expected to occur and thus cause an adverse alteration in the historical, architectural, archeological, or cultural integrity possessed by a National Register or eligible property. The boundaries of such area should be determined in consultation with the State Historic Preservation Officer as early as possible in the planning of the undertaking.

I. **Mitigation.** Any action which reduces or eliminates adverse impacts resulting from a project. Mitigation may include project redesign or relocation, data recovery and documentation, etc.

J. **Data or Resource Recovery.** As used here, this means the systematic removal of the scientific, prehistoric, historic, and/or archeological information that provide an historic property with its research or data value. Data recovery may include a limited preliminary survey of the historic property or properties to be affected for purposes of research planning, the development of specific plans for research activities, or may include extensive excavation, relocation, preparation of notes and records, and other forms of physical removal of data and the material that contains data, protection of such data and material, analysis of such data and material, preparation of reports on such data and material, and dissemination of reports and other products of the research. Examples of data recovery include archeological research producing monographs, descriptive, and theoretical articles, study collections of artifacts and other materials; architectural or engineering studies resulting in measured drawings, photogrammetry, or photography; historic or anthropological studies of recent or living human populations relevant to the understanding of historic properties; and relocation of properties whose data value can best be preserved by so doing.

K. **Keeper of the National Register.** The official designated by the Secretary as having the authority to to place districts, buildings, sites, structures and objects on the National Register and who is given responsibility for maintaining the National Register. The official designated is the Associate Director, Cultural Resources of NPS.

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3. Timing.

A. General. The provisions of this Chapter shall apply to the areas of impact (see Section 650.4.2H) within active and proposed Land and Water Conservation Fund-assisted actions. The procedures contained within this Chapter shall be incorporated and carried out as an integral component of the NEPA process. Use of the environmental certification procedure for categorical exclusions (see Chapter 650.2) does not exempt the project from compliance with this Chapter. States are responsible for carrying out these procedures as early as possible during project formulation stages and prior to project submission to NPS in order to ensure that cultural resources are considered in project planning and so that unnecessary delays are avoided. Further guidance is provided in Section 650.4.10.

B. Development Projects. Compliance with this Chapter must be complete prior to submission of the project application to NPS.

C. Acquisition Projects. Compliance with this chapter must be complete prior to the commencement of any development or demolition activities. Whenever possible, the State shall comply with these procedures prior to undertaking and Fund-assisted acquisition by utilizing one of the following options:

(1) Prior to final billing or the commencement of development if it precedes the final billing, the State shall comply with the procedures of this Chapter within the area of impact. Necessary compliance will be Fund-assisted with the exception of mitigation costs.

(2) Alternatively, the State may defer compliance until after final billing but prior to actual development. At such time, the State shall comply with the procedures of this Chapter within the proposed project's area of impact. In this instance, compliance will not be Fund-assisted unless the development occurs as part of a L&WCF project.

D. Assurance. By submitting a project application the State is making the following assurance. The State shall also require that this assurance be provided by the project sponsor if it has not been otherwise included with the State/sponsor agreement:

The State shall assist the NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 et seq.), Executive Order 11593, and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.), as

amended, by (a) consulting with the State Historic Preservation Office and with the State on the conduct of any necessary investigations to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are within the proposed area of impact of the proposed action (see 36 CFR Part 800), to conduct such investigations and to notify the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties. The State further agrees to require this assurance from local project sponsors.

E. Interim Use. Until such time as compliance with this chapter is completed, project sponsors will assure the protection of cultural resources on lands under their control acquired or proposed for development with Land and Water Conservation Fund assistance. Interim use may include only non-land disturbing activities or the replacement or renovation of existing structures which do not meet National Register criteria. Failure to protect cultural resources constitutes grounds for denial of Land and Water Conservation Fund assistance.

4. Cost Sharing.

A. Acquisition Projects. Cost for mitigation actions related to an acquisition project shall not be eligible for Fund assistance. All other costs incurred as a result of compliance with this Chapter, including preagreement costs of undertaking identification and evaluation measures, are eligible project costs and may be reimbursable in accordance with part 670 and Section 650.4.3C.

B. Development Projects.

(1) All costs incurred as a result of compliance with this Chapter, which do not involve costs for mitigation, are eligible project costs and may be reimbursable in accordance with Part 670 and Section 650.4.3C.

(2) Costs incurred for mitigation undertaken as a result of compliance with 36 CFR 800 or mitigation for resources discovered during L&WCF project development may be reimbursable through the L&WCF on a 50-50 matching basis provided that sufficient and timely funding is unavailable under the provisions of the Archeological and Historic Preservation Act of 1974 (P.L. 93-291), as amended. Mitigation, whether Fund-assisted or not, shall be the responsibility of the State and shall be conducted in a manner consistent with Department of the Interior guidelines for recovery of

scientific data (36 CFR 66), and the Secretary of the Interior's Standards for Historic Preservation Projects (36 CFR 68). Since destruction of cultural resources constitutes an irreplaceable loss, failure to provide for necessary mitigation constitutes grounds for denial of L&WCF assistance.

5. Compliance Procedures.

A. NPS Responsibility. The NPS, in consultation with the SHPO, is responsible for determining whether a project proposed for L&WCF assistance will affect a property in or eligible for listing in the National Register.

B. State Responsibility. It shall be the responsibility of the State to implement, or cause to be implemented, the provisions of this Chapter on behalf of and with the concurrence of NPS.

C. Identification of National Register and Eligible Properties. The State shall identify or cause to be identified, any National Register or eligible property located within the area of impact of a project proposed for assistance under the provisions of the Land and Water Conservation Fund Act, as amended, and which may be affected by the proposed project. (States are also encouraged to consider areas which may be indirectly affected by the project.)

(1) As a first step, the State will consult the State Historic Preservation Officer, published lists of current and eligible National Register properties, published records, and individuals or organizations with historical and cultural expertise, to determine whether historic and cultural properties are known or suspected to be within those portions of the project area which may be affected. Should the SHPO not respond within 30 days (or a longer, previously agreed upon review period) to a request for information and/or a recommendation as to the need for a survey and survey methods to be employed, the State may continue with these procedures. Information and recommendations provided by the SHPO shall be based on existing information in accordance with the responsibilities of the SHPO as provided for in 36 CFR 61.

The requirement to consult with the SHPO is independent of the State's Intergovernmental Review system (E.O. 12372). In addition, the State must assure that the SHPO is provided sufficient information (such as maps, project descriptions, environmental data) to permit a determination as to the need for, as well as the extent and intensity of, a survey.

(2) After due consideration of the information obtained pursuant to Section 650.4.5.C.(1) and prior to project approval, the State shall, in consideration of SHPO recommendations, take appropriate action. Such action may include the undertaking of a professional survey of all or part of the project area which may be impacted by the project if the area has not previously been adequately surveyed (see Section 650.4.10.).

(3) In consultation with the SHPO, the State shall apply or cause to be applied, the National Register eligibility criteria as specified in 36 CFR 60 to all properties that may possess any historical, archeological, architectural, engineering or cultural value within those portions of the project area which may be affected. Should the SHPO not respond to a request for consultation within 30 days, the State may proceed in carrying out the requirements of this Chapter.

(4) If properties are identified which are on the National Register or appear to meet National Register eligibility criteria, the State shall, in consultation with the SHPO, apply or cause to be applied, the criteria of effect in accordance with 36 CFR 800.3.(a). Should the SHPO fail to respond within 30 days (or a longer previously agreed upon time) to a request for consultation, the State, with the concurrence of the NPS Regional Director, may proceed in carrying out the requirements of this Chapter.

D. Determination of Eligibility. Should any unlisted property which may be affected by a project as defined in 36 CFR 800 be identified as being potentially eligible for listing on the National Register, the NPS Regional Director, in consultation with the SHPO, shall request a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR (to be reissued as part of 36 CFR 60). A Determination of Eligibility may be requested prior to applying the criteria of effect.

E. Determination of Effect. If it is determined that the project will have an effect on properties in or eligible for inclusion in the National Register, the State, in consultation with the SHPO, shall apply or cause to be applied the Criteria of Adverse Effect in accordance with 36 CFR 800.3(b). Should the SHPO fail to respond within 30 days (or a longer previously agreed upon time) to a request for consultation, the NPS Regional Director may make such a determination in consultation with the applicant.

(1) If it is determined that the project will not have an effect on the National Register or potentially eligible properties, the

State shall retain such documentation and the State may proceed in accordance with 36 CFR 800.4.(b)(1).

(2) If it is determined that the proposed project will not have an adverse effect on properties listed on or eligible for inclusion on the National Register, NPS shall forward adequate documentation, as provided by the State, to the SHPO and to the Executive Director of the Advisory Council on Historic Preservation in accordance with 36 CFR 800.4(c) and 36 CFR 800.6(a). Unless the Executive Director objects within 30 days after receipt of an adequately documented determination, the project may be approved.

(3) If it is determined that the project will have an adverse effect on the National Register or potentially eligible properties, the State and project sponsor shall, in consultation with the SHPO, determine whether the project can be modified or relocated at little or no cost to avoid the effect. Wherever possible, such modification/ relocation should be implemented. Alternatively, and if project modification/relocation is infeasible, the NPS in consultation with the State will formally determine whether the effect on a property on or eligible for inclusion in the National Register will be adverse. If this determination has as its finding that the effect is adverse, the State shall prepare or cause to be prepared a Preliminary Case Report in accordance with 36 CFR 800.13(b). NPS shall submit the report to the Advisory Council with a request for comments, and notify the SHPO of this request. Consultation shall proceed in accordance with 36 CFR 800.6.

(4) NPS shall not approve a proposed project until comments have been received from the Advisory Council on Historic Preservation, if it has been determined that the proposed project will have an adverse effect on a property in or eligible for inclusion in the National Register.

(5) If any project may have an adverse effect on any site listed or eligible for listing in the National Register, it may not be submitted to the NPS under the consolidated grant procedures (see Chapter 660.1).

6. Resources Discovered During Construction. If cultural resources are discovered during project construction on lands acquired or being developed with L&WCF assistance, the following actions shall take place:

A. The project sponsor shall suspend construction activities which may affect the resources and immediately notify the State.

B. The State will notify the appropriate NPS Regional Office and the State Historic Preservation Officer. Telephone notification followed by a telegraphic abstract of the situation and request for appropriate action shall constitute notification.

C. The NPS Regional Director will immediately notify the Department Consulting Archeologist (DCA). Within forty-eight hours of notification, the DCA, in consultation with the Regional Director, will investigate the situation and recommend appropriate actions pursuant to P.L. 93-291 and 36 CFR 800.

7. Data Recovery. When it is determined that the project will have an adverse effect on a property in or eligible for listing in the National Register, all feasible and practicable alternatives to avoid or beneficially incorporate the cultural resources into the project should be considered. If NPS, in consultation with the ACHP and the SHPO, determines there is no alternative but to recover the scientific, prehistoric, historical or archeological data, such recovery shall be conducted in accordance with 36 CFR 800.6 and pursuant to a Memorandum of Agreement and be consistent with the Department of Interior "Statement of Program Approach" for implementation of P.L. 93-291 (44 FR 18117). In the event that timely funding under P.L. 93-291 is unavailable, such data recovery costs may be assisted in accordance with Section 650.4.4.

8. Categorical Exclusions. The following types of projects are exempted from compliance with the requirements of this Chapter:

A. Planning projects.

B. Development projects which entail only the replacement, renovation or rehabilitation of existing facilities when such facilities do not meet the criteria for listing in the National Register and when such facilities will not be relocated or enlarged in area dimensions.

9. Destruction of Cultural Resources Prohibited. Destruction of any site or property on or eligible for inclusion on the National Register prior to or in anticipation of applying for L&WCF assistance shall constitute grounds for denial of L&WCF assistance.

10. Further Guidance. This Section is intended to provide further guidance to States and project sponsors. The following are not rigid requirements, but should be viewed as performance standards. Users should consult the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation for additional information.

A. Determining the Need for a Survey

The decision regarding the need for, and extent of an identification survey should reflect consideration of a professional judgement by the SHPO and the nature of the proposed L&WCF project. In the event that the SHPO does not provide assistance or comments, the decision should reflect the judgement of qualified professionals within the appropriate disciplines of history, architectural history, and/or archeology (refer to 36 CFR 61, for guidance in selecting qualified professionals). The decision whether or not to undertake the survey will ordinarily require an interdisciplinary appraisal to ensure that properties of potential cultural significance are fully considered.

Key factors in determining the necessity for an identification survey are 1) the probability of encountering historic and cultural sites as determined by an evaluation of existing data, (i.e., literature, geology/geography), and 2) whether the proposed project may affect a historic or potentially historic site [Criteria of Effect are defined in 36 CFR 800.3.(a)].

(1) A survey will normally be necessary when a literature search, geographic location, comments from the SHPO, or evidence from a previous reconnaissance survey indicate that there is a probability of encountering archeological or historic resources in the project area. A survey will be required if archeological and historic sites are known to be present but the area has not been adequately surveyed. If evidence from a previous reconnaissance survey indicates there is a likelihood of locating cultural resources in the project area, an intensive survey will be necessary prior to development.

(2) A survey will not normally be necessary for projects under the following circumstances:

(a) When the proposed project area has been adequately surveyed by professionals within the appropriate discipline.

(b) When there is substantive evidence that the probability of encountering cultural resources in a proposed project area is highly unlikely. Examples of such evidence would include, but are not limited to: 1) evidence from a previous reconnaissance survey, which indicates that there is little likelihood of locating cultural resources in the project area, or 2) documentation or other evidence that the area has been previously impacted by land-

altering or other activities to such an extent as to preclude the presence of cultural resources.

When considering archeological resources, disturbed areas should be accorded the same thought and attention as undisturbed areas and not necessarily be categorically excluded from being surveyed. This is because experience has demonstrated that disturbances are often superficial and that important historic and prehistoric archeological sites may exist beneath the disturbed surface.

(c) When no land-altering actions are involved in the project; e.g., when it includes only the replacement or renovation of existing non-historic facilities.

B. Conducting the Survey

For acquisition projects it is recommended that, when feasible, any necessary surveys take place prior to project approval or prior to final billing. The exact nature of the survey activities will vary depending on the planning stage, the nature of the undertaking, the area of project impact, and the natural and cultural setting. The following process will usually be appropriate.

(1) Background Research and Evaluation of Existing Data

Very few areas of the Nation have as yet been systematically surveyed for historic and archeological properties. Hence, documentary research alone will seldom be adequate. Still, this is normally the most useful starting point. Such research will yield information about both known historic resources and the level of knowledge about the resources of an area.

Because of its specialized nature, this research should be undertaken by professionals. Historians, architectural historians, historical architects, and/or archeologists may be required, depending in the particular situation. The work will, at a minimum. involve consultation of the current list of National Register-eligible properties maintained by the State Historic Preservation Officer (SHPO), and consultation with local specialists and other knowledgeable individuals. It will also involve examination of published and unpublished documentary sources.

The background research should provide data about: (a) the presence of known historic and archeological properties, (b) the probability of the existence of as yet undiscovered resources within the project area, and their probable nature

and distribution and (c) the preservation and research needs and priorities in the particular region. Finally, (d) this background evaluation should determine if a further historic resource survey will be needed to provide the agency with adequate planning data.

(2) Field Inspection

If background research and evaluation of existing data fail to produce information sufficient for project planning and historic resource management purposes, then it should be conducted by qualified personnel using a systematic research approach, and maintaining adequate records. In general, the nature of the field inspection will be affected by the level of project planning and results of previous studies.

Many different types of field inspection may be appropriate in different situations. For example:

(a) Architectural resources can often be located through walk- or drive-through inspections: in some cases, particular areas may be adequately characterized by spotchecks.

(b) In cases where it seems unlikely that cultural resources will be encountered but no documentation is available to support this prediction, a reconnaissance survey may be the only survey necessary to verify the presence or absence of cultural resources within the project boundaries.

(c) When project areas are small and reconnaissance surveys indicate that cultural resources are

(d) If the probability of encountering cultural resources is high and the project area is relatively small, it would be more cost effective and less time consuming to proceed with a single survey, while combining the features of both the reconnaissance and the intensive survey.

(3) Reconnaissance Survey

A reconnaissance survey is designed to provide a general impression of an area's historic properties and their values, and involves small-scale field work relative to the size of the area which may be impacted. A reconnaissance survey is not designed to provide sufficient data to insure identification of all historic properties in an area. Rather, it would aid the project administrator to:(a) identify obvious or well-known properties; (b) check the existence and conditions of

properties tentatively identified or predicted from background research; (c) identify areas where historic properties are obviously lacking; and (d) indicate where certain kinds of properties are likely to occur, thus making possible a more informed and specific intensive survey at a later stage of planning. A reconnaissance survey should be as inclusive as possible. It should include, for example, consideration of properties less than 50 years of age which may be significant.

(4) Intensive Survey

An intensive survey is designed to provide detailed information sufficient to identify and evaluate properties within the project area that might qualify for inclusion in the National Register of Historic Places, and which, by virtue of their location within or relative to the project site, may be subject to potentially destructive use or development. Precise field techniques necessary to identify historic properties vary among the different regions of the United States, as well as within regions. SHPO staff or the staff of the National Register, should be consulted for assistance in developing plans for such surveys. A multidisciplinary team of surveyors composed of qualified specialists may be needed, depending on the nature of the resources identified in the reconnaissance survey. Archeological resources can usually be evaluated only through a combination of surface examination and subsurface investigation.

The survey report should contain full descriptions of methods, field procedures, and results, and sufficient data to permit evaluation of all historic properties identified against the National Register criteria for eligibility, as set forth in 36 CFR 60. The report should also provide data documenting the absence of historic properties in locations where their presence had been predicted. Survey data should be recorded on inventory forms, preferably those used in the Statewide Historic Survey. "Guidelines for Level of Documentation" were published in the Federal Register, Vol. 42, No. 183, September 21, 1977, along with procedures for determinations of eligibility for inclusion on the National Register, 36 CFR 63.

EEO CONTRACT COMPLIANCE

1. General. The regulations set out in this chapter implement certain contract compliance procedures required by Executive Order 11246, as amended, and by the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor (41 CFR 60-4). These regulations shall apply to all Land and Water Conservation Fund grants involving Federally assisted construction contracts and subcontracts in excess of $10,000. In determining whether Fund-assisted construction contracts exceed this dollar limit, the total amount of the contract awarded rather than the amount of Federal assistance shall apply.

2. Coordination. It is the responsibility of the State to insure that State and local project sponsors are in compliance with these regulations. The State will cooperate with the National Park Service and the Secretary of the Interior in obtaining the compliance of project sponsors, construction contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders. The State will furnish such information as may be required for the supervision of such compliance, and it will otherwise assist the National Park Service in the discharge of their duties under Executive Order 11246, as amended (3 CFR 169), its implementing regulations (41 CFR 60), and the relevant Orders of the Secretary of Labor.

3. Women and Minority Construction Hiring Goals. The Department of Labor has developed regulations regarding goals and timetables for female and minority participation in the construction industry (41 CFR 60-4). Certain geographic areas have been established by the Office of Federal Contract Compliance Programs for the purpose of establishing goals for minority participation in the construction industry. A list of geographic areas is found in Appendices A and B of Women and Minorities in Construction (published by the OFCCP in the 5/5/78 Federal Register).

   A. Goals and timetables established for women are national in scope and apply uniformly throughout the nation. As such there is one set of goals, found in Appendix A of Women and Minorities in Construction. (See above reference).

   B. Goals and timetables established for minorities apply only in the specific geographic areas listed in Appendix B of Women and Minorities in Construction. (See above reference).

4. State Responsibilities. The following are State responsibilities under Executive Order 11246 for State sponsored projects and responsibilities which must be required of local project sponsors.

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A. Include the following in solicitation for offers and bids on federally assisted construction contracts over $10,000 (not required for newspaper or advertisements):

(1) "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity," including goals which are to be inserted by contracting officer or applicant. (see Attachment 650.5A). Goals may be obtained from the OFCCP.

(2) "Standard Federal Equal Employment Opportunity Construction Contract Specification." (see Attachment 650.5B).

B. For construction contracts over $10,000, the following must be included in the contract:

(1) "Equal Opportunity Clause". (This may be included by reference Attachment 650.5C).

(2) "Standard Federal Equal Employment Opportunity Construction Contract Specification." (See Attachment 650.5B).

(3) "Certification Non-Segregated Facilities" signed by prime contractor and subcontractor. (See Attachment 650.5D).

C. Provide notice of contract awards subject to these provisions to Director of OFCCP within 10 days after the award (Notice includes name, address and telephone number of contractor, employer identification number, dollar amount of contract, estimated starting and completion dates, contract number and geographical area in which the contract is to be performed). Notice should be sent to OFCCP's Regional Office or Area office. The location of these offices may be obtained from the OFCCP or the Regional Office of NPS.

D. Cooperate with the Director of NPS and the Director of the OFCCP in the implementation of the program.

E. Insure that EEO posters are displayed on Federally assisted construction sites. Posters may be obtained from the OFCCP.

F. Insure that contractors engaged in Federally assisted construction contracts are providing data and reports to the appropriate OFCCP regional office as required or requested. (See Section 650.5.5).

G. Insure that the provisions of the "Equal Opportunity Clause" (Attachment 650.5C) are followed for construction contracts involving force account labor.

H. Carry out sanctions and penalties imposed upon the federally assisted construction contractor or subcontractor by the Secretary of Labor pursuant to Executive Order 11246, and refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Executive Order 11246, as amended.

5. Contractor Responsibilities. The following are the responsibilities of federally assisted construction contractors under Executive Order 11246:

A. Under Executive Order 11246, the contractor must do the following if the contract is for $10,000 or more:

(1) Abide by the provisions of the "Equal Opportunity Clause" (Attachment 650.5C) whether it applies to government construction contracts or whether it applies to federally assisted construction contracts.

(2) Abide by the provisions of the following:

(a) "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity." (Attachment 650.5A).

(b) "The Standard Federal Equal Employment Opportunity Construction Contract Specification." (Attachment 650.5B)

(3) Insure that personnel decisions are also in accordance with the following:

(a) Uniform Guidelines on Employee Selection Procedures.

(b) Sex Discrimination Guidelines.

(c) Guidelines on Discrimination Because of Religion or National Origin.

(4) Incorporate into all subcontracts the following:

(a) "The Equal Opportunity Clause." (Attachment 650.5C).

(b) "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity." (Attachment 650.5A).

(c) "The Standard Federal Equal Employment Opportunity Construction Contract Specification". (Attachment 650.5B).

(5) Provide data and reports to OFCCP as required or requested including the following:

(a) One time notification within 10 days of all construction projects in the designated geographic area, federal and nonfederal by agency, contract number, location, estimated dollar value, percent completed and project completion date.

(b) Notification of any subsequent construction work (Federal and non-Federal) in the designated geographic area in excess of $10,000.

(c) Workforce Utilization Report to be filed monthly. (Form CC-257).

(6) Maintain non-segregated facilities.

(7) Include a signed "Certification of Non-Segregated Facilities" in contracts and require subcontractors to include a signed "Certification of Non-Segregated Facilities. (See Attachment 650.5D).

(8) Expressly state in all employment solicitation or advertising that the contractor is an Equal Opportunity Employer.

(9) Display Equal Opportunity Poster.

(10) Allow OFCCP personnel access to site, records, and employees for purpose of determining the contractor's compliance status.

(11) Refrain from entering into contracts with contractors debarred from Federal contracts or federally assisted construction contracts by the Secretary of Labor.

6. Sanctions. In the event of noncompliance with the provisions of this chapter, sanctions outlined in Section 303(b) of Executive Order 11246 and 41 CFR 60-1.4(b) may include one or all of the following actions:

A. Cancellation, termination or suspension, in whole or in part of the grant.

B. Refraining from extending any further assistance to the project sponsor until satisfactory assurance of future compliance has been received.

C. Referring of the case to the Department of Justice for appropriate action.

7. Approval of Additional Requirements. The National Park Service will not require or propose to require the performance of duties in addition to those set forth in Executive Order 11246, as amended, its implementing regulations, and the requirements of this chapter unless written approval is obtained from the Department of Labor, Office of Federal Contract Compliance Programs.

8. Complaints. States and local project sponsors receiving complaints alleging violation of Executive Order 11246, as amended, by contractors or by any of their subcontractors shall promptly transmit such complaints to the appropriate Department of Labor Regional Office (Office of Federal Contract Compliance Programs).

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

TIMETABLES	Goals for Minority Participation for Each Trade	Goals for Female Participation in Each Trade
	(Insert Goals For Each Year)	(Insert Goals For Each Year)

These goals are aplicable to all the Contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Employment Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith efort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project-to-project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor, employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of

the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

(EXECUTIVE ORDER 11246)

1. As used in these specification:

   A. "Covered area" means the geographic area described in the solicitation from which this resulted.

   B. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

   C. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   D. "Minority" includes:

      (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

      (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which the contract resulted.

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3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan Area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 A through P of this Attachment. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulation promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

   A. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which

the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

B. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.

C. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

D. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

E. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7B above.

F. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper; annual report, etc.; by specific review of the policy with all management personnel and with all minority and female

employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

G. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

H. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.

I. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

J. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

K. Validate all tests and other selection requirements where here is an obligation to do so under 41 CFR Part 60-3.

L. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

M. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

N. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

O. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

P. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of the affirmative action obligations (7A through P). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7A through P of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor maybe in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of this Attachment, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause.

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure the applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicant will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency

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and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant contract, loan, insurance, guarantee; refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding $10,000 which are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed contractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

_____ _____
Signature Date

_____
Name and Title of Signer (Please type)

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

NATIONAL FLOOD INSURANCE PROGRAM

1. Scope. The Flood Disaster Protection Act of 1973 (P.L. 93-234) requires the purchase of flood insurance as a condition of receiving any Federal financial assistance (including Land and Water Conservation Fund assistance) for acquisition or construction purposes in special flood hazard areas located in any community currently participating in the National Flood Insurance Program authorized by the National Flood Insurance Act of 1968. These special flood hazard areas are identified by the Flood Insurance Administration of the Federal Emergency Management Agency.

2. Improvements Eligible for Flood Insurance Coverage.

   A. Definitions. For the purposes of the National Flood Insurance Program, the term "financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein. The terms building and mobile home are further defined as any walled and roofed structure that is principally above ground and affixed to a permanent site. Structures and their contents which meet these definitions are referred to as insurable improvements in this chapter.

   B. Examples of insurable improvements for which insurance is required include, but are not limited to the following:

      (1) Restroom facilities.

      (2) Administrative buildings.

      (3) Bathhouses.

      (4) Interpretive buildings.

      (5) Maintenance buildings and sheds for landscaping tools or other equipment.

      (6) Sheltered facilities consisting of two or more walled sides and a roof.

   C. Examples of improvements for which insurance is not required include, but are not limited to the following:

(1) Open picnic shelters.

(2) Permanently affixed outdoor play equipment such as swings and slides.

(3) Sun shades covering outdoor ice skating rinks.

(4) Outdoor swimming pools.

3. Requirement for Flood Insurance

A. Flood insurance will be required for insurable facilities located within special flood hazard areas for which the Federal Insurance Administration has issued a flood hazard boundary map or a flood insurance rate map. If the Federal Insurance Administration withdraws the applicable map(s) for a special flood hazard area for any reason, the insurance requirement is suspended for projects located in that special flood hazard area which are approved during the period the map(s) is (are) withdrawn.

B. Communities identified as having special flood hazard areas must qualify within one year of notification by the Flood Insurance Administration. If an identified community has not qualified for the program by the prescribed date, no financial assistance can be provided for acquisition or development of insurable improvements. Such assistance will remain unavailable until the community has qualified. Financial assistance for non-insurable acquisition or development or for projects outside of the special flood hazard areas is not affected by whether the community is qualified or not qualified for flood insurance.

After a community has qualified for the flood insurance program, financial assistance for acquisition or development of insurable improvements will be predicated upon purchase of flood insurance for those improvements by the project sponsor.

C. Flood insurance required by P.L. 93-234 must be carried on insurable improvements throughout their useful life.

D. Flood insurance is not required on any State-owned property that is covered under an adequate State policy of self insurance. A revised list of States to which this exception applies will be published periodically by the Flood Insurance Administration of the Federal Emergency Management Agency.

4. Amount of Insurance

A. The amount of insurance required by P.L. 93-234 is the lesser of (1) the development cost of the insurable improvement or (2) the maximum limit of coverage made available with respect to the particular type of facility under the National Flood Insurance Act of 1968. The amount is based on the total cost of the insurable improvement, not just the Federal share.

B. Whenever flood insurance is available to cover a facility during construction, the project sponsor will obtain such coverage as soon as the facility becomes insurable. Coverage is usually available as soon as construction progresses beyond the excavation phase.

FLOODPLAINS AND WETLANDS

1. General. Project sponsors must comply with the provisions of 44 CFR 6342 Section 2 on all proposals involving floodplains and wetlands.

   A. All projects must comply with the intent of Executive Orders 11988, "Floodplain Management", and 11990, "Protection of Wetlands", and with the U.S. Water Resources Council's "Floodplain Management Guidelines for Implementing E.O. 11988" (43 FR 6030, February 10, 1978).

   B. The ultimate authority for all States in the floodplain management decisionmaking process remains with NPS.

   C. The environmental assessment for all development projects must state whether or not there will be an impact on floodplains or wetlands.

2. Development Projects. Direct or indirect L&WCF support of floodplain development or construction in wetlands shall be avoided when there is an adverse impact on the natural and beneficial values and practicable alternatives exist.

   A. When activities must be carried out in a floodplain or wetland, the work must be done in a manner which, to the extent possible, will minimize harm to lives, property and floodplain values, and will restore and preserve the natural and beneficial values served by floodplains and wetlands.

   B. Flood proofing of eligible structures shall be eligible for financial assistance from the Land and Water Conservation Fund.

3. Acquisition. Acquisition projects for the future establishment of facilities which do not have long- or short-term adverse impacts associated with the occupancy or modification of floodplains or wetlands, nor direct or indirect support of floodplains or wetlands development are excluded from these guidelines. However, these guidelines do apply to acquisition projects for future development which may have the potential for resulting in such impacts or support.

4. Excluded Facilities. Certain types of recreation development often are consistent with the intent of the Executive Orders. These types of developments will be reviewed, and when it is found that they neither have long- or short-term adverse impacts associated with the occupancy or modification of floodplains or wetlands, nor do they directly or indirectly support floodplains or wetlands development, they are

excluded from any further compliance with these guidelines. These are the following:

A. Scenic overlooks and trails.

B. Boating facilities excluding boat houses.

C. Picnic and camping facilities including appropriate sanitary and other support facilities needed to provide full utilization of recreational developments, provided that flood resistance is a consideration in their design and construction.

D. Outdoor water sports facilities such as beaches (not excluded for wetlands).

E. Entrance, access and internal roads to existing parks (not excluded for wetlands).

F. Outdoor shooting ranges (not excluded for wetlands).

G. Outdoor play courts (not excluded for wetlands).

H. Beautification of an existing outdoor recreation area, such as landscaping.

I. Parking lots for existing parks, sports and playfields, and playgrounds (not excluded for wetlands).

J. Wildlife observation stations and environmental education facilities, excluding buildings.

5. Environmental Documentation. The environmental documentation shall include:

A. The extent of the direct and indirect impacts associated with direct and indirect support of floodplain and wetlands development.

B. Measures to be taken to minimize harm to lives and property, and to the natural and beneficial floodplain values; and to restore and preserve the values served by floodplains and wetlands.

C. Alternative actions and locations considered in the event of an adverse impact.

D. Assurance that all State and local floodplain and wetlands regulations and standards are being met.

E. A map delineating the floodplain or wetlands.

6. Public Involvement. The project sponsor shall ensure that the general public has an opportunity for early review of the development plans or proposals for actions affecting floodplains or wetlands. In all cases, except for the excluded facilities listed in 650.7.3 and 650.7.4, a press notice will be published in the local media briefly describing the proposed action and urging members of the public to provide their views to the sponsor. It shall expressly state that the proposed site is in a floodplain or wetland.

7. Intergovernmental Review. The project sponsor or the State shall include a copy of the press notice and public comments received, the Notice of Intent and the proposed environmental assessment with the project information submitted to the State's Intergovernmental Review System established under E.O. 12372 (see Chapter 650.8) In addition to the documentation required in 650.7.5 above, the assessment/EIS shall explain why the proposed action is to be taken in the floodplain or wetland and include a simple location map.

8. Adverse Comments. When adverse comments are received as a result of the Intergovernmental Review process or early public review, the NPS Regional Office will forward documents to the agencies listed below.

   A. Environmental Protection Agency.

   B. Federal Insurance Administration.

   C. Fish and Wildlife Service

   D. U.S. Geological Survey.

   E. Bureau of Reclamation (western States only -Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming)

   F. Corps of Engineers

   G. Soil Conservation Service.

   H. State Water Resources Agency.

   I. State Liaison Officer (when appropriate).

   J. State Historic Preservation Officer (when appropriate).

K. State's Intergovernmental Review System Single Point of Contact (when appropriate).

L. State Wildlife Agencies (when appropriate).

M. Appropriate public interest groups.

9. SCORPS. In accordance with Section 2(c) of Executive Order 11988, "Floodplain Management", Statewide Comprehensive Outdoor Recreation Plans must, to the extent possible, address the requirements and goals of the executive orders on floodplain and wetlands.

10. Certification. States may document their compliance with these Executive Orders through the usual certification process for streamlined and consolidated project applications (see Chapter 660.1).

A. For all other L&WCF project application, the State will be granted the authority to simply certify project compliance with these guidelines, without having to maintain compliance documentation for each project if it can demonstrate that its floodplain and wetlands State laws are equal to or stronger than the Executive Orders. The NPS Regional Office will make this determination.

B. Finally, in order to eliminate duplication of paperwork and procedures, existing State or local procedures may be utilized to meet all or part of the requirements of the Orders. The procedures used, however, must be at least equivalent to those mandated by the Orders and Water Resources Council's February 10, 1978 guidelines. Compliance with the project sponsors floodplain procedures must be fully documented for each project. NPS Regional Offices shall determine if a State or one of its political subdivision's procedures meet the equivalency requirement.

11. Records. In accordance with the documentation requirements of the Executive Orders, records will be kept by the States on the type and number of projects affected by these floodplain or wetlands regulations, the number of acres affected and the mitigation made.

INTERGOVERNMENTAL REVIEW SYSTEM (E.O. 12372)

1. Purpose. For NPS financial assistance programs, a State which has established an OMB sanctioned intergovernmental review system must specifically identify the program(s) for which it wishes to exercise Executive Order (EO) 12372 review authority. For States which have established such a system and chosen the L&WCF program for review, there is no EO 12372 mandated requirement per se for review and comment on L&WCF Statewide Comprehensive Outdoor Recreation Plans (SCORPs). Such States must be provided the opportunity, however, to review proposals for L&WCF grants. SCORPs are impacted by the E.O. 12372 provision of Section 9.12 of 43 CFR Part 9 allowing States the option of simplifying, consolidating or substituting State plans. (see Attachment 650.8A)

2. Single Point of Contact (SPOC). States establishing intergovernmental review systems in accordance with EO 12372 must designate a "Single Point of Contact" (SPOC). The SPOC will receive proposals for review if the State has selected the L&WCF program for coverage. NPS will, as under A-95, require that grant applicants (both locals and State) maintain responsibility for submission of applications for review and comment to the SPOC. The SPOC may seek comments from other State agencies, Regional planning commissions/councils of government, local officials, and others.

3. Comment Period. L&WCF proposals must be submitted by the applicant to the SPOC at least 60 days in advance of the final decision on funding or denial of a proposal.

4. Response to State Comments. States must submit comments on L&WCF assistance proposals directly to the appropriate NPS Regional Office. The State must provide NPS with copies of all comments which it receives or evidence that the SPOC was provided the opportunity to comment on the proposal. If NPS decides not to accept the recommendation (to deny funding or to modify the proposal) of a SPOC, it must provide the SPOC with a written explanation of the failure to accommodate at least 10 days (plus five additional days to allow for receipt through the mail) in advance of carrying out its (NPS's) decision to approve a proposal in accord with Section 9.10 of 43 CFR Part 9 (see Attachment 650.8A)

5. Non-Selected Programs and Non-Participating States. For States with EO 12372 review mechanisms which have not selected the L&WCF program for coverage, and for States that have not established a review system, NPS nonetheless has the obligation of notifying directly affected State, areawide and regional agencies, and local governments of proposed actions. This may be accomplished through publication of the notice of

intent in the Federal Register or (preferred) through direct submission by the applicant of notices of intent. Such notices should include a detailed description of the proposal, an address where comments may be forwarded, and the deadline for comment. The review and comment period for this type of review need not be the same as the review period for selected programs in participating States (up to 60 days) but should be as close to the same time period as is feasible. Where NPS fails to accommodate comments on non-selected programs or from non-participating States, there is no requirement to provide States with an advance notice prior to taking action on a proposal.

6. **Simplification, Consolidation, and Substitution of State Plans.** In accordance with EO 12372 and the Department's regulations on implementation referred to in Section 9.12 of 43 CFR Part 9 (see Attachment 650.8A) States may simplify, consolidate, or substitute Federally required State plans including the Statewide Comprehensive Outdoor Recreation Plan (SCORP). Prior approval of NPS is not required in order for a State to take advantage of this provision. The provision applies to the form in which the plans are presented, but not the content. This means that a plan may, as an example, show up as a chapter of a larger comprehensive plan covering housing, transportation, the State budget, etc. The information provided must, however, continue to meet existing NPS SCORP requirements for content.

7. **Environmental Requirements.** NPS must continue to assure that requirements of the National Environmental Policy Act (NEPA) are met. Under A-95, grant applications were reviewed by clearinghouses for environmental compliance. Such reviews may or may not be conducted by States under EO 12372-established review systems. Therefore, the State should be contacted early in the application process to determine if such a review will be conducted and to determine (if needed) where the proposal should be forwarded in order for environmental requirements to be met. Detailed guidance on meeting environmental requirements as they relate to EO 12372, are contained in Chapter 7 of the Departmental Manual, 511 DM. (see Attachment 650.8B).

EXCERPTS FROM E.O. 12372 REGULATIONS (43 CFR PART 9)
(FEDERAL REGISTER, VOL. 48, NO. 123, Friday, June 24, 1983)

Section 9.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

(1) Accepts the recommendations;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

Section 9.12 How may a State simplify, consolidate, or substitute Federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans

into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute Federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet Federal requirements.

EXCERPTS FROM DEPARTMENT OF INTERIOR MANUAL-511 DM 7

Chapter 7 Environmental Impact

7.1 Background. The Department's procedures for compliance with the National Environmental Policy Act (NEPA), adopt the regulations of the Council on Environmental Quality (CEQ) and are included in 516 DM 1-7, Protection and Enhancement of Environmental Quality. This chapter complements those procedures.

7.2 Procedures. Based on 516 DM 1.5, bureaus and offices will utilize to the maximum extent possible existing notification, coordination and review mechanisms.

A. Executive Order 12372 Process - To the extent feasible, the Department will work with States to integrate handling of the NEPA consultative process with the official State review process.

(1) When the State has agreed to incorporate the review of NEPA documents in its process, the State will designate the single point of contact with responsibility for assuring that appropriate State, metropolitan, regional and local agencies authorized to develop and enforce environmental standards are informed of such projects and serving as the focal point for obtaining information and comments on Federal and Federally assisted projects.

(2) In the case of major Federal actions significantly affecting the quality of the human environment, bureaus and offices will send copies of environmental impact statements to the State single point of contact for review and comment. These actions may be Federal assistance projects, direct Federal development projects, or Federal leases, licenses or permits.

(3) In the case of Federal assistance projects listed in Appendix 1 to 511 DM 1, applicants may be required to submit to the State single point of contact an analysis of the anticipated environmental effects of the proposed project. Applicants are made aware of this requirement by bureau distributed application materials, in preapplication conferences, or in response to inquiries regarding procedures.

B. No Executive Order 12372 Process - If a State has not established a process, or the program or activity has not been selected for a State process, the bureau or office is responsible for assuring that requirements for managing the NEPA process are met in accordance with 516 DM.

Manual Release 151
Replaces all preceding manual releases

C. Other Environmental Review and Consultation Requirements - Bureaus and offices should refer to a list of related environmental review and consultation requirements which is published as a supplementary directive by the Office of Environmental Project Review.

TITLE VI GUIDELINES

1. General.

A. Authority. These guidelines are issued under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et. seq; Executive Order 11764; Department of Justice Regulations 28 CFR 42; and Department of Interior Regulations 43 CFR 17.

B. Purpose. (43 CFR 17.1; 28 CFR 42.401) These guidelines provide detailed information on the compliance requirements of Title VI of the Civil Rights Act of 1964 to the end that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination with respect to federally assisted programs administered by the Department of the Interior. Included in the guidelines are procedures for filing complaints and the responsibilities of the Department and its grantees in attaining compliance with the Act.

C. Definitions. (43 CFR 17.12; 28 CFR 42.402)

(1) "Act" means the Civil Rights Act of 1964, and any guidelines, rules and regulations of the Department effectuating Title VI of this Act.

(2) "Applicant" means a qualified entity which submits an application for assistance under the Land and Water Conservation Fund Act.

(3) "Department" means the U.S. Department of Interior.

(4) "Director" means the Director of the Office for Equal Opportunity of the Department.

(5) "Federal Financial Assistance" means (1) grants and loans of Federal funds, (2) grants or donations of Federal property and interests in property, (3) the detail of Federal personnel (4) the sale or lease of, or the permission to use (on other than a casual or transient basis) Federal property or any interest in such property without consideration or at a nominal consideration or at a consideration which is reduced for the purpose of assisting the recipient in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

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(6) "Primary Recipient" or "Grantee" means a State that is authorized to contract for or extend Federal financial assistance to itself or to a subrecipient for the purpose of carrying out a program of the Department.

(7) "Subrecipient" or "Subgrantee" means any political subdivision or instrumentality of a State, public or private institution, or any entity or individual to whom Federal financial assistance is extended.

(8) "Compliance Review".

(a) "Post-Award Compliance review" means an onsite, comprehensive assessment of the Title VI compliance of an agency that has received Federal financial assistance from the Department. Such reviews are designed to determine if programs and activities of the agency are administered and operated in compliance with the Act.

(b) "Follow-up Compliance review" means a follow-up examination of specific aspects of a grantee's Federally assisted program or activity to determine whether the grantee has resolved reported conditions of noncompliance.

(9) "Compliance Officer" means an Equal Opportunity Specialist assigned the responsibility of conducting Title VI Compliance Reviews.

(10) "Covered Employment" means employment practices covered by Title VI.

D. Covered Employment. (43 CFR 17.3(6)(c); 28 CFR 42.409) Where employment practices directly affect services to beneficiaries under a federally assisted program to which these guidelines apply, that recipient's or subrecipient's employment practices shall be subject to the nondiscrimination provisions of the Act. Enforcement of the Act with respect to covered employment practices shall not be superseded by State or local merit systems relating to such employment practices.

2. Compliance Responsibilities.

A. OEO Responsibility. The Office for Equal Opportunity (OEO), as authorized by the Secretary of the Interior, shall assure that no person participating in a program funded in whole or in part by the National Park Service (NPS) is subjected to discrimination on the basis of race, color, or national origin. This shall be accomplished

through continuing policy direction, oversight, and compliance reviews of selected recipients and subrecipients as well as technical assistance and program evaluation of NPS Regional Offices.

B. NPS Responsibility. The National Park Service as primary grantor of federal assistance for recreational acquisition and development, has direct responsibility for assuring that the State and subrecipients are in compliance with the provisions of the Act.

The NPS shall execute its responsibility through:

(1) providing guidance to the States in establishing an open project selection process to allocate L&WCF assistance among applicants,

(2) notifying OEO of any inconsistencies with Title VI having arisen from onsite facility reviews conducted by NPS personnel, and

(3) cooperating with OEO toward seeking a satisfactory resolution of any inconsistencies found, including efforts toward seeking voluntary compliance enforcement procedures and follow-up reviews.

C. Primary Recipient Responsibility. (43 CFR 17.4) (28 CFR 42.407) The States, as primary recipients of assistance, are responsible to give reasonable assurance that the applicant and all subrecipients will comply with the requirements imposed by Title VI, including methods of administration which give reasonable assurance that anynon-compliance will be corrected. This shall be accomplished through:

(1) establishing an open project selection process (see Chapter 660.4) according to the standards of NPS,

(2) providing the State Civil Rights Agency or Authority (if it exists) the opportunity to comment upon applications submitted.

(3) notifying OEO of any inconsistencies with Title VI having arisen from onsite facility reviews conducted by State personnel (where the inconsistency cannot be corrected at the State level),

(4) cooperating with OEO toward seeking a satisfactory resolution of any inconsistencies found, including efforts toward seeking voluntary compliance, enforcement procedures and follow-up reviews, and

(5) assuring that each subrecipient/applicant is provided a copy of these guidelines.

D. Coordination of Responsibility. The Office for Equal Opportunity will periodically conduct compliance reviews of the State's administration of the L&WCF program, including the compliance of subrecipients with the Act. OEO and NPS will provide the State, subrecipients and applicants for assistance with such technical assistance as necessary to reasonably assure compliance with the Act. Federal, State, and local officials are expected to cooperate fully toward securing voluntary compliance where deficiencies in program or facilities may be found.

3. Title VI Complaint Procedures.

A. General. (28 CFR 42.408) (43 CFR 17) This section prescribes the procedures of the Department and its primary recipients with respect to the prompt processing and disposition of complaints.

B. Who May File. Any person, or specific class of persons, who believes that he or she has been subjected to discrimination as prohibited by the Act may personally, or by representative, file a complaint.

C. How, When, and Where to File. (28 CFR 42.408) All complaints filed under Title VI must be in writing, and must be signed by the complainant and/or the complainant's representative. In the event that a complaint is made in other than written form, the official receiving the complaint must instruct the complainant to reduce the complaint to writing and submit it to the Office for Equal Opportunity, Department of the Interior for prompt processing. The complaint should contain: the name, address and telephone number of the complainant; the name and address of the alleged discriminatory official or recipient; the basis of the complaint and the date of the alleged discrimination.

Complaints must be filed within 180 days from the date of the alleged discrimination. The time limit for filing may be extended by the Director of the Office for Equal Opportunity. Complaints should be filed directly with the Office for Equal Opportunity, U.S. Department of the Interior, Washington, D.C. 20240. In the event that complaints are received by NPS and/or recipients, such complaints shall be forwarded to the Office for Equal Opportunity within 10 days.

(1) Public Notification of Right to File a Complaint. The NPS shall be responsible for ensuring that its recipients inform the

public of their right to file a complaint. Where primary recipients extend Federal assistance to subrecipients, the primary recipient shall also be responsible for ensuring that this standard is met. (28 CFR 42.405).

(a) This is to be accomplished by distribution and display of posters explaining the nondiscrimination provisions to Title VI as they apply to State and subrecipient recreation programs (see Attachment 650.9A). Posters must be placed in at least one conspicuous place in each funded system, but preferably will be visible in several locations. In addition to Title VI requirements, posters should note the availability of additional Title VI information and explain briefly the procedures for filing complaints.

(b) NPS and its recipients shall also include information on Title VI requirements, complaint procedures, and the rights of beneficiaries in handbooks, manuals, pamphlets, and other materials which are ordinarily distributed to the public to describe the federally assisted programs or activities. Where a percentage of the population in excess of 10% (or 5,000) speaks a language other than English, the above described material should be prepared in the appropriate language.

D. Complaint Processing. (28 CFR 42.408) (43 CFR 17.6)

(1) Acknowledgement of Complaint. The Office for Equal Opportunity shall acknowledge in writing, the receipt of every complaint within 10 days of reception. Acknowledgement letters shall be sent to the complainant, NPS and the primary recipient.

(2) Complaints Log. Recipients shall maintain a log of any Title VI complaint received. Moreover, OEO shall maintain a log of all such complaints received for processing. The purpose of the complaint log is to provide essential information and data regarding each complaint being processed by the Department. Each log must contain a case number, the complainant's name, address and telephone number. The log must also include a description of the complaint; the date the complaint was filed and investigation completed; the disposition of the case; all other information pertinent to the complaint. (28 CFR 42.408).

(3) Routing responsibilities. When NPS or any primary or subrecipient receives a complaint, the office in receipt must log in the complaint, note the date of receipt on the

complaint and maintain a confidential copy for its records. The original complaint document must be forwarded to the Office for Equal Opportunity within 10 days of receipt pursuant to Section 650.9.3C. OEO shall acknowledge its receipt and notify the recipient, as well as NPS, of the assigned case number.

(4) Determination of Jurisdiction. Upon receipt of a complaint by the Department, the Office for Equal Opportunity shall determine whether the complaint comes within the purview of the Act. When the Department lacks jurisdiction over a complaint, the Director shall refer the complaint to the appropriate State or Federal agency that has responsibility for addressing the concern. Upon receipt of such a complaint, the OEO shall notify the NPS, recipient and complainant's representative of its actions.

E. Complaints Investigations. (43 CFR 17.6(d))

(1) Scope. Investigation shall be confined to issues and facts relevant to allegations in the complaint.

(2) Confidentiality. Complainants shall be offered a pledge of confidentiality as to their identity. This offer, if accepted, shall be binding on the investigator. Complainants shall be interviewed at all times in places which will not create risk of compromising confidentiality. Except where essential to the investigation, the investigator shall not reveal the identity of the complainant to the respondent or to any third party. If the investigator determines the necessity to reveal the complainant's identity, complainant's permission to do so must be secured.

(3) Conduct of Investigation. Upon determination of jurisdiction by the Department, the Office for Equal Opportunity shall promptly initiate an investigation of the matter.

(4) Investigation Reports. In all instances where an investigation has been conducted, an investigation report shall be prepared, with findings and recommendations. The complainant and the agency against whom the complaint is made shall be notified in writing of the disposition of the matter.

(5) Investigation by Primary Recipients. The Director, within 10 working days of the receipt of a complaint, may authorize a primary recipient to investigate the complaint and make

findings and recommendations subject to OEO approval. Upon delegation of authority by the Director, a primary recipient may investigate complaints filed against subrecipients. The investigative report will be provided to OEO within 30 days of authorization to investigate. The primary recipient may not investigate any complaint in which it, or any of its officers or employees is implicated. If at any time prior to its completion, it is determined that investigation of a complaint has been improperly conducted, the Director may withdraw the primary recipient's authority to investigate. If the complainant is dissatisfied with the findings of the investigation, the complainant may appeal the findings to OEO for its decision within 5 days of the complainant's receipt.

4. Compliance Review Procedures.

A. General. (28 CFR 42.407) (43 CFR 17.6a) This section prescribes the types of compliance reviews which will be conducted periodically to ensure that the Department's outdoor recreation programs are operated in compliance with the Act. Such reviews will cover NPS, primary recipient and subrecipient operations.

B. Compliance Review Responsibilities. (28 CFR 42.411) (43 CFR 17.5) The Office for Equal Opportunity shall periodically conduct onsite compliance reviews and desk audits of NPS primary recipients and subrecipients. Moreover, primary recipients shall review the operations of its subrecipients. These reviews shall be accomplished in accordance with Section 650.9.4E.

The office that conducts the compliance review shall prepare and issue a report on its findings and recommendations to the reviewed entity after the onsite review is completed to assist the review entity in voluntarily complying with the Act. However, remedial action must be initiated by the recipient or subrecipient to correct the deficiency(s). Where conditions of noncompliance have been found, such conditions must be resolved by the recipient within a reasonable period of time. A copy of the report and related correspondence shall be kept on record by the office performing the review for a period of 3 years. This information shall be made available to the OEO upon request.

C. Determinations of Compliance. All determinations of compliance with the Act shall be made by OEO. It is expected that NPS will review Title VI aspects of the program in conjunction with ongoing program reviews.

D. Selection Criteria.

(1) Post-Award Reviews. In the selection of recipients and subrecipients for post-award review, OEO shall base selections on such factors as:

(a) available compliance information collected from previous reviews;

(b) frequency of past compliance reviews conducted of the recipients;

(c) community racial patterns;

(d) Title VI complaints of alleged discrimination;

(e) size of the federally assisted program or activity; and

(f) amount and type of Federal assistance to the recipient.

E. Compliance Reviews.

(1) Compliance Reviews of Primary Recipients by OEO. Recipient compliance shall be based on the following:

(a) Whether the primary recipient, in allocating Federal funds, has considered the criteria set out in Section 650.9.2C in meeting the nondiscrimination provisions of Title VI.

(b) Whether the primary recipient is adequately providing Title VI information to its subrecipients and by what means (i.e. through posters and brochures). Where necessary, whether bilingual information is also available.

(c) Whether Title VI complaints received by the primary recipient are forwarded immediately to OEO.

(d) The frequency and quality of all compliance assistance provided by the primary recipient for its subrecipients.

(e) Whether Title VI compliance responsibilities have been designated to qualified primary recipient staff personnel and whether such responsibilities are being effectively executed.

(2) Compliance Reviews of Subrecipients. Subrecipient compliance with the Act shall be based on the following:

(a) Whether and by what means the subrecipient notifies the public that its programs are offered on a nondiscriminatory basis:
(i) Whether the Title VI ("An Equal Opportunity for All") poster or one comparable is visible in conspicuous areas on the premises. (see Attachment 650.9A).

(ii) Where mailing and/or telephone lists are used to inform the public of subrecipient programs, whether such lists are comprised of a racial and ethnic cross-section of the community.

(iii) Where necessary, whether bilingual informational materials are provided the public.

(b) Whether racial data concerning minority participation in subrecipient programs is gathered and maintained for review, where program participation has been found to be deficient.

(c) Adherence to Title VI complaint procedures pursuant to Section 650.9.3.

(d) Whether records indicate that complaints of alleged discrimination have been received and forwarded to OEO.

(e) Where planning and advisory groups exist, whether membership includes minority representatives.

(f) Whether services and programs are comparable in minority and majority communities with respect to development and maintenance standards.

(g) Whether all persons have an equal opportunity to participate in programs and activities without discrimination or segregation by race, color or national origin. More specifically:

(i) Accessibility of facilities and services to the minority community.

(ii) Where admission fees are charged for program participation, whether such fees are equal in both minority and majority communities.

(iii) Adequacy of outreach program to the minority community.

F. If Non-Compliance is Found. (28 CFR 42.411)

(1) Voluntary Compliance Defined. Voluntary Compliance means willingness to correct conditions of noncompliance identified by complaint investigations or compliance reviews. Departmental regulations (43 CFR 17.7) require the resolution of an apparent condition of noncompliance by informal means whenever possible.

(2) Procedures for Achieving Voluntary Compliance.

(a) In every case where a complaint investigation or compliance review results in a finding of noncompliance, the Director shall notify the primary or subrecipient through certified mail of the apparent noncompliance. The notice shall clearly identify the conditions of noncompliance and offer a reasonable time to willingly comply.

(b) The Office for Equal Opportunity shall record the date the recipient received notice, and shall note and record the last day afforded the primary or subrecipient for voluntary compliance before initiating the administrative process to terminate Federal assistance.

(c) The primary or subrecipient may request a meeting for the purpose of discussing the problem areas or requirement for compliance. The principal investigator will accompany the Director or his designated representative to the meeting for the above stated purpose.

(d) The Director or his designee shall approve the primary or subrecipient's voluntary compliance plans, methods, procedures, and proposed actions if such approval will result in compliance with the Act.

(3) Sanctions Available to the Department. When an applicant for or a recipient of Federal financial assistance is found to be in noncompliance with the Act, and compliance cannot be achieved by voluntary means, the Act provides several enforcement alternatives. If discrimination based on race, color, or national origin or any other technical violation of the Act is found in an applicant's program, the Office for Equal Opportunity can recommend temporary deferral of federal funds to the agency awarding the grant until full compliance has been satisfactorily established. If the grant has been made, the Office for Equal Opportunity may initiate administrative proceedings for the termination of current

and future funding. Alternatively, the OEO may enforce the Act by "any other means authorized by law." Although not explicitly stated by the Act, such other means include referral to the U.S. Department of Justice for appropriate judicial enforcement.

No order suspending, terminating, or refusing to grant assistance to a primary or subrecipient can become effective until the Office for Equal Opportunity has:

(a) Advised the primary or subrecipient of its failure to comply and determined that compliance cannot be secured by voluntary means.

(b) Made an express finding on the record after opportunity for hearing of a failure by the applicant or primary or subrecipient to comply with a Title VI requirement.

(c) Obtained approval of the action to be taken from the Secretary of the Interior (43 CFR 17.7(c)).

(d) Ensured that the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved.

(e) Submitted a full written report of the circumstances and the grounds for such action to the Secretary.

G. If No Conditions of Non-Compliance Are Found. Where the Director or his designee determines that review and investigation findings do not support an allegation of discrimination, the complaint shall be administratively closed. Within five (5) working days of the closing date, the complainant will be notified through certified mail of the decision and given the reason(s) for the decision reached.

H. Referrals to the U.S. Department of Justice. (28 CFR 42.408 & 411) The Department shall report to the Assistant Attorney General of the Civil Rights Division on January 1 and July 1, of each year, the receipt, nature and disposition of all processed Title VI complaints. Any conditions of noncompliance in a recipient program or activity which cannot be voluntarily resolved by OEO, shall also be reported to the Assistant Attorney General for appropriate judicial enforcement within 60 days.

MINORITY BUSINESS ENTERPRISE (MBE) DEVELOPMENT

1. General

A. Authority. These guidelines were established under the authority of Executive Order 12432 dated July 14, 1983, Minority Business Enterprise Development.

B. Purpose. These guidelines were established to provide detailed information on the compliance requirements of Executive Order 12432. They provide guidance and oversight for programs for the development of minority business enterprise and to implement the commitment of the Federal Government to the goal of encouraging greater economic opportunity for minority entrepreneurs.

C. Definitions.

(1) "A MBE concern" is a business which is:

(a) certified as socially or economically disadvantaged by the Small Business Administration (SBA);

(b) certified as a minority business enterprise by a State or Federal agency; and

(c) an independent business concern which is at least 51 percent owned and controlled by a minority group member(s).

(2) A "minority group member" is a citizen of the United States and one of the following:

(a) Black American;

(b) Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America);

(c) Native American (American Indian, Eskimo, Aleut, or native Hawaiian); or

(d) Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U. S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, or the Indian subcontinent).

(3) A women's business enterprise concern is a business which is certified as such by a State or Federal agency and is an independent business concern which is at least 51 percent

owned by a woman or women who also control and operate it.

2. Compliance Responsibilities.

A. State. The State shall comply with Executive Order 12432, Minority Business Enterprise Development by:

(1) Placing minority business firms on bidder's mailing lists;

(2) Soliciting these firms whenever they are potential sources of supplies, equipment, construction, or services;

(3) Where feasible, dividing total requirements into smaller needs, and setting delivery schedules that will encourage participation by these firms;

(4) Using the assistance of the Minority Business Development Agency of the Department of Commerce, the Small Business Administration, the Office of Small and Disadvantaged Business Utilization, Department of the Interior (DOI), the Business Utilization and Development Specialists who reside in each DOI bureau and office, and similar State and local offices, where they exist;

(5) Reporting quarterly on all active projects approved after September 30, 1984, which involve $500,000 or more in L&WCF assistance (except for acquisition projects). Such reports will be submitted on a SF-334 (Attachment A) to the National Park Service Regional Office. The first report will be submitted prior to the commencement of any construction.

B. National Park Service. The National Park Service (NPS) is committed to minority business development and to encourage economic opportunity for minority entrepreneurs through the development of annual plans and development of procedures to provide opportunity for minority firms to participate. NPS is required by Executive Order 12432, to file quarterly reports concerning performance of Minority Business Enterprise (MBE) Development. L&WCF compliance will be satisfied by:

(1) Incorporating a statement pertaining to MBE compliance in the general provisions of all grant agreements;

(2) Reporting quarterly on all grants (except for acquisition projects) which involve $500,000 or more in L&WCF assistance;

(3) For those grants amounting to $500,000 or more in L&WCF assistance, there will be a one-time submission of the form SF-334 when no subcontracting opportunities exist under a grant or cooperative agreement;

(4) Block 7 of the form SF-334, used to furnish the name, address, phone number, dollar amount, and award date for each subagreement (subcontract), is no longer required to be filled out unless the subagreement is $10,000 or more.

NPS Regional Offices will transmit to the WASO Recreation Grants Division SF-334's documenting project sponsor efforts to hire minority business firms.

SF 334's are due to the Washington Office from the Regions within one month following the end of each fiscal quarter (i.e., January 31, April 30, July 31, and October 31). The NPS Washington Office will consolidate the reports from the Regions and forward them, through the Assistant Director, Minority Business Enterprise, to the Department of the Interior Office of Small and Disadvantaged Business Utilization (OSDBU) within 10 days from the dates indicated above.

OMB NOS> 9999-0001 AND 0640-0017
EXPIRES: APRIL 30, 1990

MBE/WBE* UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENT, AND OTHER FEDERAL FINANCIAL ASSISTANCE

PART 1. (NEGATIVE REPORTS MAY BE REQUIRED)

1A. FEDERAL FISCAL YEAR 19_____	1B. REPORTING QUARTER (Check appropriate box) ☐ 1st (Oct.-Dec.), ☐ 2nd (Jan.-Mar.), ☐ 3rd (Apr.-Jun.), ☐ 4th (Jul.-Sep.)
2. FEDERAL FINANCIAL ASSISTANCE AGENCY (Department/Agency, Bureau/Administering Office, Address)	3. REPORTING RECIPIENT (Name and Adedress)
2A. REPORTING CONTACT / PHONE:	3A. REPORTING CONTACT / PHONE:
4A. FINANCIAL ASSISTANCE AGREEMENT ID NUMBER	4B. FEDERAL FINANCIAL ASSISTANCE PROGRAM
4C. TYPE OF FEDERAL ASSISTANCE AGREEMENT ☐ GRANT ☐ COOPERATIVE AGREEMENT ☐ OTHER FEDERA FINANCIAL ASSISTANCE	
5A. PERIOD WHEN PROCUREMENT UNDER THIS AWARD WILL OCCUR START DATE:	END DATE:
5B. AMOUNT OF TOTAL PROJECT DOLLARS PLANNED FOR PROCUREMENT THIS FISCAL YEAR $	5C. RECIPIENT'S MBE/WBE GOALS (Percednt of total procurement dollars (5b) for each) MBE % WBE %
5D. MBE/WBE PROCUREMENT ACCOMPLISHED THIS QUARTER MBE $ WBE $	5E. NEGATIVE REPORT (Check) ☐ SEE INSTRUCTIONS
6. COMMENTS :	

7. NAME OF AUTHORIZED REPRESENTATIVE	TITLE
8. SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE

*WBE reporting is optional at thed direction of Federal financial assistance agnecy

STANDARD FORMN 334
AUTHORIZED FOR LOCAL REPRODUCTION P rescribed by DEPARTMENT OF COMMERCE

Manual Release 151
Replaces all preceding manual releases

MBE/WBE PROCUREMENTS OVER $10,000 MADE DURING REPORTING QUARTER

PART II.

Procurement Made By		Business Enterprise		$ Value of Procurement	Date of Award (MM/DD/YY)	Type of Product or Service[1] (Enter Code)	Name/Address of MBE/WBE Contractor or Vendor[1]
Recipient	Other	Minority	Women				

[1] Type of product of service codes:

1 = Agriculture
2 = Mining
3 = Construction
4 = Manufacturing
5 = Transportation
6 = Wholesale Trade
7 = Retail Trade
8 = Finance, Insurance, Real Estate
9 = Services
a = Business Services
b = Professional Services
c = Repair Services
d = Personal Services
10 = Other

INSTRUCTIONS

Manual Release 151
Replaces all preceding manual releases

MBE/WBE UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENTS. AND OTHER FEDERAL ASSISTANCE
Standard Form 334

A. General Instructions:

MBE/WBE utilization is based on Executive Orders 11625, 12138, and 12432 and OMB Circular A-102. Standard Form 334 must be completed by recipients of Federal grants, cooperative agreements, or other Federal financial assistance valued at $500,000[1] or more *and* which involve procurement of supplies, equipment, construction or services to accomplish Federal assistance programs.

Recipients are required to report to agency award officials within one month following the end of each Federal fiscal year quarter (i.e. January 31, April 30,1 July 31 and October 31) during which *any* procurement in excess of $10,000 is actually executed under this assistance agreement.

B. Definitions:

Procurement is the acquisition athrough order, pruchase, lease or barter of supplies, equipment, construction or services needed to accomplich Federal assistance programs.

A *minority business enterprise* (MBE) is a business concern that is (1) at least 51 percent owned by one or more minority individuals, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority individuals; *and* (2) whose daily business operations are managed and directed by one or more of the minority owners.

There is no standard definition of *minority individuals* used by all Federal financial assistance agencies. However, recipients shall presume that minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, or other groups whose members are found to be disadvantaged by the Small Business Act or by the Secretary of Commerce under section 5 of Executive Order 11625. The reporting contact at your Federal financial assistance agency can provide additional information.

A *woman business enterprise* (WBE) is a business concern that is, (1) at least 51 percent owned by one or more women, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women; *and*, (2) whose daily business operations are managed and directed by one or more of the women owners.

Business firms which are 51 percent owned by minorities or women, but are in fact managed and operated by non-minority individuals do not qualify for meeting MBE/WBE procurement goals.

The following affirmative steps for utilizing MBEs and WBEs are suggested:

1. Inclusion of MBEs/WBEs on solicitation lists.
2. Assure MBEs/WBEs are solicited once they are identified.
3. Where feasible, divide total requirements into smaller tasks to permit maximum MBE/WBE participation.
4. Where feasible, establish delivery schedules which will encourage MBE/WBE participation.
5. Encourage use of the services of the U.S. Department of Commerce's AMinority Business Development Agency (MBDA) and the U.S. Small Business Administration to identify MBEs/ WBEs.
6. Require that each party to a subgrant, subagreement, or contract award take the affirmative steps outlined here.

C. Instructions for Part I:

1. Complete Federal fiscal year and check applicable reporting quarter. (Federal fiscal year runs from AOctober 1 through September 30.)
2. Identify the Federal financial assistance de- p artment or agency including the bureau, office or other subactivity which administers your financial assistance agreement.
3. Identify the agency, state, authority, university or other organization which is the recipient of the Federal financial assistance and the person to contact concerning this report.

4a. Assistance agreement number assigned by Federal financial assistance agency.

4b. If appropriate, identify specific department or agency Federal financial assistance program under which this project is awarded.

4c. Check type of Federal assistance.

5a. Period during which contracts and other purchasses under this award will actually be executed.

5b. Includes procurement using Federal funds plus recipient matching funds and funds from other sources.

5c. Portion ot total procurement dollars recipient plans to spend with MBEs or WBEs this fiscal year. With the concurrence of the Federal financial assistance agency, a fair share goal shall be determined byh each recipient.

5d. Dollar amount of all MBE/WBE contracts awarded under this assistance agreement this quarter.

5e, Check only if one or more procurements in excess of $10,000 were executed this reporting quarter but *no* MBE/WBE procurements occurred. Sign

[1] There is no reporting threshold for the Environmental Protection Agency (EPA). Recipients of EPA financial assistance must repe size of the award.

and date form and eturn it to Federal financial assistance agency.

6. Additional comments or explanations. Please refer to specific item number(s) if appropriate.

7. Name and title of official administrator or designated reporting official.

8. Signature and month, day, year report submitted.

D. Instructions for Part II:

For each MBE/WBE procurement over $10,000 made under this assistance agreement during the reporting quarter, provide the following information. (Recipients may also report on individual MBE/WBE procurements of less than $10,000 if they want these credited toward their MBE/WBE goals, however, reporting on smaller procurements is not required.)

1. Check whether this is a *first tier* procurement made directly by Federal financial assistance recipient or other *second tier* procurement made by recipient's subgrantee or prime contractor. Include all qualifying second tier purchases executed this quarter regardless of when the first tier procurement occurred.

2. Check MBE or WBE.

3. Dollar value of procurement.

4. Date of aware, shown as month, day, year.

5. Using codes at the bottom of the form, dientify type of product or service acquired through this procurement (eg., enter 1 if agriculture, 2 if mining, etc.).

6. Name and address of MBE/WBE firm.